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JILL SCHLICHTMANN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

FRANK M. JORDAN
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

NOTICE OF THE REGULAR MEETING OF THE SAN
FRANCISCO RESIDENTIAL RENT STABILIZATION
& ARBITRATION BOARD, Tuesday, 5:30 p.m.
January 4, 1994

25 Van Ness Avenue, #70, Lower Level

AGENDA

BARRIE BECKER
LARRY B. BECKER
MICHAEL COFFINO
DAVID G. GRUBER
MAMIE HOW
MERRIE T. LIGHTNER
KATHERINE NASH
CATHERINE STEANE

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

DOCUMENTS DEPT

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SAN FRANCISCO
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- A. 2711 Bryant St. 0001-26R (cont. from 12/14/93)

A tenant hardship appeal of a capital improvement certification.

- B. 1261A - 17th Ave. 0001-27R (cont. from 12/14/93)

The tenant's petition alleging an unlawful rent increase was dismissed due to the tenant's failure to appear at the hearing. Staff was to explore settlement possibilities.

- C. 433 Waller St. 0001-37A (cont. from 12/14/93)

The tenant's petition alleging decreased housing services was granted, in part. Staff was to check overpayment calculations.

- D. Parkmerced 0001-28R through 0001-33R
(cont. from 12/14/93)

Six tenant hardship appeals of a capital improvement certification. Staff was to request additional information.



E. 1494 Fulton St. 0001-34R

Tenant appeal of their decision regarding their decreased housing services petition.

F. 2112 - 22nd St., Upper 0001-38A

Landlord appeal of a decision regarding an unlawful rent increase petition.

G. 330 Ashton Ave. 0001-40A

Landlord appeal of a decision regarding an unlawful rent increase petition.

H. 455 Cole St. #6 0001-39A

Landlord appeal of a decision regarding his capital improvement petition.

I. 3921 Lincoln Way 0001-35R

Tenant hardship appeal of a decision regard a capital improvement petition.

VI. Communications

VII. Director's Report

IX. Old Business

A. Hearsay Evidence in Rent Board Hearings

B. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XII. Calendar Items

XIII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 15, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present: L. Becker; Coffino; Gruber; Lightner; Nash;
Steane.

Commissioners not Present: B. Becker; Marshall; Schlichtmann.

Staff Present: Grubb; Wolf.

Commissioner How appeared on the record at 5:40 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 1, 1994.
(Steane/Lightner: 5-0)

IV. Remarks from the Public

A tenant voiced a complaint that certain landlords perpetually break the law; and expressed her opinion that the allowable interest on capital improvement passthroughs should be lowered from the current 10%.

V. Consideration of Appeals

A. 150 Greystone Terr. #2 & #3 O001-50A; O001-30R & -40R

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. The landlord was also found liable to one tenant in the amount of \$832.35 due to the prior owner having included a capital improvement passthrough in base rent for purposes of calculating the annual rent increase. The landlord appeals the refund of rent overpayments, asserting the equitable doctrine of laches. Two tenants appeal the passthrough of the costs of new windows as a common area improvement, when their units did not get new windows.

MSF: To accept the tenants' appeals and remand the case to the same hearing officer on the issue of allocation of the costs of the windows; to deny the appeals as to all other issues. (Steane/L. Becker: 2-3; Coffino, Gruber, Lightner dissenting)

MSC: To accept the tenants' appeals and remand the case to the same hearing officer on the issue of allocation of the costs of the windows; to accept the landlord's appeal and remand to the same hearing officer on the issue of laches. (Lightner/Gruber: 3-2; L. Becker, Steane dissenting)

B. 99 Jersey St. O001-45A (cont. from 2/1/94)

Three tenants' petitions alleging decreased housing services due to the prior landlords' conversion from steam to electric heat in 1982 were granted by the hearing officer, resulting in the current landlords being found liable to each tenant in the amount of \$9,340.20. The landlords appealed the decision, asserting: landlord hardship; that they had no actual or constructive notice of the conversion from landlord-provided to tenant-paid heat; that the limitation contained in Rules Section 10.10(c) should be found to be applicable in this case, and the rent reductions should go back no longer than one year prior to the filing of the petitions; and, since these owners did not acquire the property until nine years after the conversion, the only evidence they were able to obtain consisted of hearsay. At their meeting on February 1, 1994, the Commissioners passed a motion to accept the appeal and schedule a Board hearing on the issue of laches; they also continued the matter for two weeks in order to obtain additional information regarding the landlord's claim of financial hardship, which was subsequently withdrawn.


C. 2025 Pine St. #9 O001-49A

The tenant's petition alleging a substantial decrease in housing services was denied because the hearing officer found that the issue presented was not ripe for adjudication. Although the tenant believes that the landlord will ask him to share his storage space with another person or vacate the space, at the time of the hearing the tenant still had exclusive use of the space. The landlord appeals, alleging that there are several errors in the decision, and that the hearing officer exhibited bias against her.

MSC: To remand the case to the same hearing officer to issue a Dismissal of the tenant's petition without prejudice to re-filing, and without Findings of Fact. (Steane/Lightner: 5-0)

D. 2071 Fulton St. #2 O001-38R

Two tenant petitions alleging unlawful rent increases, substantial decreases in housing services and the landlord's failure to make requested repairs were



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dismissed by the hearing officer due to lack of jurisdiction. The hearing officer found that the premises were still exempt from the Ordinance due to owner-occupancy, despite the fact that the owner has resided in a convalescent hospital for almost two years. The tenants appeal, asserting that the building is not owner-occupied as defined in the Ordinance, because the owner does not reside there and is unlikely to ever do so again.

MSC: To deny the appeal. (Gruber/Lightner: 4-1; L. Becker dissenting)

E. 347 Oak St.

O001-48A

The tenant's petition alleging unlawful increases in rent was granted by the hearing officer, and the landlord was found liable in the amount of \$13,028.05 due to increases given under a claim of owner-occupancy exemption. On appeal, the landlord asserts that a prior Decision of Hearing Officer, issued in 1986 and upheld on appeal, that found the structure to consist of one 8-unit building rather than two 4-unit buildings was incorrect; that the hearing officer erred in considering "capital contributions" made by the prior owner's estate to be "rent"; and that there are mathematical mistakes in the decision regarding banking and the calculation of rent overpayments.

After discussion, it was the consensus of the Board to continue this matter in order to obtain legal advice from the City Attorney regarding the issue of collateral estoppel.

VI. Appeal Hearing

Parkmerced

O001-28 R & -31R (acpt. 1/4/94)

This case involves five petitions for certification of capital improvement costs incurred for the installation of new windows throughout this multi-unit complex. The landlord and the majority of the tenants reached a settlement in this matter, wherein the amount of the passthrough was substantially reduced. The tenants in six units appealed imposition of the reduced passthrough amount on the basis of financial hardship. Two of the tenants' appeals were denied; the landlord agreed to waive the passthrough for two other of the tenants; and the appeals of tenants John Firth (O001-31R) and Robert and Barbara Pender (O001-28R) were accepted for Board hearing.

Tenant John Firth appeared at the appeal hearing and represented himself; tenant Robert Pender appeared on behalf of himself and Barbara Pender. No appearance was made on behalf of the landlord. Testimony focused on the income and resources of each tenant-appellant. After discussion, the Commissioners passed the following motions:

MSC: Regarding tenant John Firth, to find financial hardship sufficient to warrant deferral of the certified amount until Mr. Firth attains 62 years of age, or May 13, 1997. The landlord

may notice the passthrough on May 1, 1997, to take effect on June 1, 1997. If the tenant believes his circumstances warrant further deferral of the increase, he may file a petition, to be decided by a hearing officer. Imposition of the passthrough shall be stayed pending the hearing officer's determination. (L. Becker/Steane: 5-0)

MSC: Regarding tenants Robert and Barbara Pender, to find no financial hardship. (Gruber/Lightner: 4-1; L. Becker dissenting)

VII. Communications

The Commissioners received the following communications:

A. Copies of Memos from the Executive Director to Supervisor Pedro Ruiz and members of the counseling staff, congratulating them on their well-attended and successful workshop for Tenant Service Providers.

B. A copy of *The Tenant Times*, a publication of the San Francisco Tenants' Union.

C. A letter from the landlord involved in the case at 1266 Fulton Street.

D. A letter from the landlord in the case involving 189 Parnassus Avenue, asking that the Board make an exception to the recently-enacted Statute of Limitations regarding capital improvement passthroughs.

VIII. Director's Report

Executive Director Grubb reported as follows:

A. The draft budget for the next fiscal year has been completed. The agency's budget is fundamentally the same as the last few years, except for \$58,000 for Year 2 of the computer migration project; and \$9,000 for temporary salaries in the event of the prolonged absence of a staff member. President Coffino briefly reported on his meeting with the mayor and Presidents of other commissions regarding the budget process.

B. Three student interns from USF will be volunteering at the Rent Board; Supervisor Pedro Ruiz is schooling them in the intricacies of the rent law and office procedures.

C. Mr. Grubb will be on vacation from February 22nd through February 25th.

D. At the request of Commissioner Gruber, the Director informed the Commissioners that they could obtain badges, and presented a catalog showing the different styles available.

E. On February 17th, the Housing and Land Use Committee of the Board of Supervisors will discuss amendments to the Ordinance pertaining to payments to tenants in the event of an "Ellis" removal of a unit from housing use; and legislation proposed by Supervisor Hsieh concerning evictions for owner occupancy.

IX. Old Business

A. Ordinance and Rules Changes: Issues for Discussion

Deputy Director Wolf provided the Commissioners with copies of letters from Attorneys Michael Hall and Susan O'Neill, who are counsel for the Shanti Project and the Salvation Army, urging the Board to extend exemption from the Ordinance to communal housing provided by non-profit organizations for indigent persons who qualify for such housing due to health issues.

IV. Remarks from the Public (cont.)

Robert Pender invited the Commissioners to attend the Tenants' Convention on March 5th, at 777 Valencia Street. He also introduced them to his organization, the Tenants' Network.

X. Calendar Items

February 22, 1994 - NO MEETING

March 1, 1994

4 appeal considerations

6:00 Appeal Hearing: 330 Ashton Ave. O001-40A (acpt. 1/4/94)

March 8, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 8:30 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
March 1, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

V. Consideration of Appeals

A. 704 Bush St. #500 O001-51A

Landlord appeal of a decision regarding a petition alleging an unlawful rent increase, decreased housing services, and failure to repair.

B. 848 Divisadero St. O001-41R

Tenant appeal of a decision regarding a petition alleging an unlawful rent increase, decreased housing services and failure to repair.

C. 3835 - 24th St. O001-52A

Landlord appeal of a decision regarding a petition alleging decreased housing services.

D. 1846 Anza St. O001-42R

Tenant appeal of a decision regarding a petition alleging decreased housing services.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

A. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 330 Ashton Ave. O001-40A (acpt. 1/4/94)

XII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 1, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present: B. Becker; L. Becker; Coffino; Gruber; ;
Lightner; Marshall; Nash; Schlichtmann;
Steane.

Commissioners not Present: How.

Staff Present: Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of February 15, 1994.
(Marshall/Lightner: 5-0)

IV. Consideration of Appeals

A. 704 Bush St. #500

O001-51A

The tenant filed a petition alleging unlawful rent increases, substantially decreased housing services, and the landlord's failure to make requested repairs. The petition was denied as to all issues except for the lack of a closet door, for which the landlord was found liable to the tenant in the amount of \$30.00 per month (\$210.00). The landlord appeals, asserting that the closet door did not fail due to normal wear and tear and that a \$30.00 monthly rent reduction is excessive under the circumstances.

MSC: To deny the appeal. (Marshall/B. Becker: 4-1; Gruber
dissenting)

B. 3835 - 24th St.

O001-52A

The tenant's petition alleging decreased housing services and the landlord's failure to make requested repairs was granted, in part, by the hearing officer. The landlord was found liable to the tenant in the amount of \$1,543.44 due to unlawful rent increases and \$5,112.00 due to serious habitability problems in

the unit, and the annual rent increase was deferred until outstanding code violations are abated. On appeal, the landlord alleges that: the hearing officer erred regarding the substantiality of several of the conditions in the unit and exhibited personal bias against her; the tenant maintained on several occasions that the problems were not serious; the level of heat provided is compatible with the wiring in the building; and the front bedroom ceiling leak was repaired prior to the hearing.

MSC: To deny the appeal. (B. Becker/Marshall: 5-0)

C. 1846 Anza St.

O001-42R

The tenant filed an appeal in this matter twenty-two days late because she had been suffering from post-viral bronchial spasms, attested to by a doctor's note.

MSC: To excuse Commissioner L. Becker from consideration of this appeal. (Gruber/Marshall: 5-0)

MSC: To find good cause for the late filing of the appeal.
(Marshall/B. Becker: 5-0)

The tenant's petition alleging substantially decreased housing services was denied by the hearing officer because the tenant failed to meet her burden of proving that storage and parking in the garage were provided or reasonably to be expected at the inception of her tenancy, nor that the landlord had completely eliminated the tenant's access to the garage. On appeal, the tenant alleges that the hearing officer's decision was based on false testimony at the hearing by the landlord's son and the landlord's attorney.

MSC: To deny the appeal . However, if the circumstances should change, and the tenant's access to the garage is completely blocked, the tenant may file a new petition. (Gruber/Lightner: 5-0) .

V. Appeal Hearing

330 Ashton Ave.

O001-40A

The tenant's petition alleging an unlawful increase in rent from \$197.50 to \$500.00 in 1985 was granted, and the landlord was found liable to the tenant in the amount of \$31,579.80. The landlord asserted that the tenant voluntarily raised his own rent in order to be able to remain in the unit, because the landlord was considering putting the single family dwelling up for sale at the time of the increase. The Board accepted the landlord's appeal on the issues of laches and landlord hardship.

The tenant was present at the scheduled hearing and represented himself. The landlord was in attendance, but was represented by his daughter and his attorney; several witnesses for the landlord were also in attendance. Testimony

focused on the circumstances surrounding the imposition of the 1985 rent increase, and the landlord's income, assets and resources.

After discussion, the following two motions were made:

MSC: To deny the landlord's appeal as to the issue of laches.
(Coffino/Marshall: 4-1; Gruber dissenting)

MSF: To grant the landlord's appeal on the grounds of financial hardship and overturn the hearing officer's decision regarding the rent overpayment in its entirety. (Gruber/Lightner: 2-3; Coffino, B. Becker, Marshall dissenting)

It was the consensus of the Commissioners to continue this matter for two weeks in order for the parties to meet with the Director and Deputy Director and attempt to mediate this matter.

VI. Communications

The Commissioners received the following communications:

A. A letter and Press Release from Judy Johnson, Assistant District Attorney, regarding settlement of the wrongful eviction case People v. Adanza, Court No. 1444173.

B. A copy of the fiscal year 1994-1995 departmental budget.

VIII. Director's Report

Executive Director Grubb reminded the Commissioners that their Conflict of Interest forms are due on April 1, 1994.

IV. Remarks from the Public (cont.)

Al Goodwin suggested that the Board make an effort to define "landlord hardship", as landlords coming before the Commission will always have a tangible asset.

X. Calendar Items

March 8, 1994 - NO MEETING

March 15, 1994

6:00 9 appeal considerations (1 cont. from 3/1/94)
Appeal Hearing: 3912 Lincoln Way O001-35 R (acpt. 1/4/94)
Old Business:
A. 330 Ashton Ave. (O001-40A) (heard 3/1/94)
B. 189 Parnassus Ave.
C. Ordinance & Regs. Changes

March 22, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 10:20 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
March 15, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 848 Divisadero St. O001-41R (cont. from 3/1/94)

Tenant appeal of a decision regarding a petition alleging an unlawful rent increase, decreased housing services and failure to repair.

B. 825 Geary St. #303 O001-53A

Landlord appeal of a decision regarding a petition alleging decreased housing services.

C. 1018 Mission St. #212 O001-43A

Tenant appeal of a decision denying his claim of decreased housing services.

D. #4 Appleton Ave. O001-55A

Landlord appeal of a decision regarding a petition alleging decreased housing services.

E. 3718 - 24th St. O001-45R

Tenant appeal of a decision denying her decreased housing services claim.

F. 193 Downey St. O001-54R

Landlord appeal of a decision regarding a petition alleging decreased housing services and failure to repair.

G. 515 John Muir Dr. #313 O001-44R

Tenant appeal of a decision denying his decreased housing services claim.

H. 12, 16, 18 & 20 Edith St. O001-57A

Landlord appeal of a decision certifying certain capital improvement costs.

I. 968 Capp St. O001-56A

Landlord appeal of a dismissal of his capital improvement petition due to his failure to appear at the hearing.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

A. 330 Ashton Ave. O001-40A (heard 3/1/94)

B. 189 Parnassus St.

C. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 3912 Lincoln Way O001-35R (acpt. 1/4/94)

XII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 15, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	How.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of March 1, 1994 with the following addition: consideration of the appeal for the case at 848 Divisadero Street (O001-41R) was continued for two weeks to further settlement negotiations between the parties.
(Coffino/Lightner: 5-0)

IV. Consideration of Appeals

A. 848 Divisadero St. O001-41R (cont. from 3/1/94)

Consideration of this matter was further continued to the March 29, 1994 meeting in order to provide the parties with additional time to reach a settlement.

B. 825 Geary St. #303 O001-53A

The tenant's petition alleging decreased housing services due to the lack of a working fireplace was granted by the hearing officer and the landlord was found liable to the tenant in the amount of \$50 per month for an 8-1/2 month period. The landlord appeals, alleging that the tenant used the hearing process simply to obtain a cash award with which to move out of the building; and that the tenant exaggerated the importance of a fireplace to him, as his new apartment does not contain a fireplace.

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

C. 1018 Mission St. #212 O001-43A

The tenant's petition alleging a decrease in housing services due to the lack of an operational table lamp in his furnished room was denied by the hearing officer because the tenant failed to provide notice of the problem to the landlord, nor did he prove that the problem was sufficiently substantial to warrant a reduction in rent. On appeal, the tenant asserts that he should have won by default, as the landlord failed to appear at the hearing; and alleges bias on the part of the hearing officer, Rent Board staff, and the Rent Board Commission.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

D. 4 Appleton Ave. #4 O001-55A

The tenant's petition alleging decreased housing services was granted in part and denied in part. The tenant had prevailed on a prior petition. The hearing officer herein denied additional rent reductions for conditions that remained unchanged since the prior hearing; nor did she allow rent reductions for issues that could have been raised in the prior case. The landlord appeals because additional rent reductions were granted for two items, asserting that the repairs had been effectuated by the time of the hearing.

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

E. 3718 - 24th St. O001-45R

The tenant's appeal was filed approximately four months late because she labeled her appeal as a "Response to Appeal", and therefore her appeal was never processed as such.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Coffino: 5-0)

The tenant's petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenant in the amount of \$400 due to the lack of a heating source in the tenant's bedroom. The tenant appeals the denial of the rest of the issues raised in her petition, asserting that the hearing officer was misled by the landlord's documentation, including BBI reports; that the landlord provided false testimony at the hearing; and that there is inadequate weatherstripping in the unit.

MSC: To deny the appeal. Lightner/Gruber: 5-0)

F. 193 Downey St. O001-54R

The tenants' petition alleging decreased housing services and the landlord's failure to make requested repairs was granted, in part, by the hearing officer and the landlord was found liable to the tenants in the amount of \$1,695.00 due

to serious habitability problems in the unit. The annual increase was also deferred for a 3-month period. The landlord appeals, alleging that: he was unable to attend the hearing because he was out of the country, although the hearing had been rescheduled to a date in late December at the landlord's request; the wiring for the building, deemed to be inadequate by the hearing officer, was found to be in good working order by his electrician; and the roof repairs have been effectuated.

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

G. 515 John Muir Dr. #313

O001-44R

The tenant herein has filed numerous previous petitions, as well as the instant petition, alleging that the pool and spa at the complex are unsanitary and not properly maintained. The tenant is disabled and needs to use these facilities on a daily basis. However, the hearing officer found that the tenant failed to prove that the subject facilities do not conform to applicable codes and standards. The tenant was granted \$60.00 only, due to an uncarpeted, and therefore hazardous, garage floor for a two-month period. The tenant appeals, asserting that the hearing officer did not allow him to present his case, which included over 200 pictures, along with voluminous other evidence.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

H. 12, 16, 18 & 20 Edith St.

O001-57A

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. In several instances, the hearing officer limited the passthroughs to the amounts requested in the landlord's petition, which were 10% of the tenants' base rents but less than the \$30 maximum the landlord was entitled to under the "cap". The landlord's representative appeals, asking that the landlord not be penalized due to a "glitch" in his computer program, because this was the first case he had been involved in where several of the base rents were less than \$300.00.

MSC: To accept the appeal and remand the case to the same hearing officer to issue a Technical Correction granting the maximum amounts the landlord is entitled to under Section 7.12(d) of the Rules and Regulations.
(Coffino/Lightner: 3-2; B. Becker, Marshall dissenting)

I. 968 Capp St.

O001-56A

The landlord's petition for certification of capital improvement costs was dismissed by the hearing officer due to the landlord's failure to appear at the properly noticed hearing. On appeal, the landlord asserts that he failed to receive notice of the hearing, and submits a Declaration of Non-Receipt of Notice of Hearing in support of his claim.

MSC: To accept the appeal and remand the case for a new hearing.
(Lightner/Gruber: 5-0)

V. Appeal Hearing

3912 Lincoln Way

O001-35R

The landlords' petition for certification of capital improvement costs was granted, in part, by the hearing officer. Some of the costs that were certified for passthrough were associated with seismic strengthening of the building in conjunction with the legalization of a downstairs unit. On appeal, the tenant alleged that much of the work was the result of the landlords' deferred maintenance; that the seismic work was not necessary and was of no benefit to her unit; and that she is a single, working mother for whom the increase is a financial hardship. The Board accepted the tenant's appeal on the issues of: the proper allocation of costs associated with the legalization of the downstairs unit (installation of new sheer wall, anchor bolts and hold downs; and new metal beams and tight beam for the front of the house); and the tenant's claim of financial hardship, if necessary.

The tenant and the landlords were present at the scheduled hearing; all parties represented themselves. Testimony focused on the reasons that the work was effectuated; and the tenant's financial circumstances. After discussion, the Commissioners passed the following motions:

MSC: To deny the tenant's appeal and uphold the Decision of Hearing Officer regarding the passthrough of certified capital improvement costs. (Gruber/Lightner: 3-2; B. Becker, Marshall dissenting)

MSC: To deny the tenant's appeal on the basis of financial hardship, but to make the effective date for the commencement of the certified capital improvement passthrough April 1, 1994. (Lightner/Gruber: 5-0)

VI. Communications

The Board received a letter from Janan New of the S.F. Apartment Association, expressing support for a draft amendment prepared by Commissioner Lightner, dealing with the issue of agreements between landlords and tenants.

VIII. Director's Report

Executive Director Grubb reminded the Commissioners that their Conflict of Interest forms are due on April 1, 1994. He also informed them that Deputy Director Delene Wolf, who had been working in a temporary capacity, is now permanent in that position.

IX. Old Business

A. 330 Ashton Ave.

O001-40A (heard 3/1/94)

In hopes of achieving a settlement between the parties, the Executive and Deputy Directors will be conducting a mediation on this matter on March 30, 1994 at 2:30 p.m.

B. 189 Parnassus St.

The Commissioners briefly discussed this matter and decided to continue it to an earlier place on the next Board meeting Agenda.

C. Ordinance and Rules Changes: Issues for Discussion

Commissioner Lightner asked that her fellow Commissioners Fax comments to her regarding her proposal concerning agreements between landlords and tenants.

X. Remarks from the Public

Robert Pender of the Tenants' Network informed the Commissioners about AB 1320, introduced by Assemblyman Costa. Charles LaKamp of the S.F. Apartment Association commended the Board for its handling of the Lincoln Way appeal hearing, stressing the importance of the Rent Board enacting and implementing policies supportive of landlords' capital improvement efforts.

XI. Calendar Items

March 22, 1994 - NO MEETING

March 29, 1994

6:00 4 appeal considerations (1 cont. from 2/15/94; 1 cont. from 3/15/94)
Appeal Hearing: 2112 - 22nd St. (O001-38A) (acpt. 1/18/94)
Old Business:
A. 189 Parnassus Ave.
B. Ordinance & Regs. Changes

XII. Adjournment

President Coffino adjourned the meeting at 8:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
March 29, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Old Business
 - A. 189 Parnassus St. (cont. from 3/15/94)
- VI. Consideration of Appeals
 - A. 347 Oak St. O001-48A (cont. from 2/15/94)
Landlord appeal of a decision refunding rent overpayments.
 - B. 848 Divisadero St. O001-47R (cont. from 3/15/94)
Tenant appeal of a decision regarding a petition alleging an unlawful rent increase, decreased housing services and failure to repair.
 - C. 515 O'Farrell St. #104 O001-46R
Tenant appeal of a decision regarding a PG&E passthrough.
 - D. 2233 Divisadero St. #201 O001-47R
Tenant appeal of a decision regarding decreased housing services.
- VII. Communications
- VIII. Director's Report
- IX. Consideration of Allegations of Wrongful Evictions
- V. Old Business (cont.)

B. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 2112 - 22nd St. O001-38A (acpt. 1/18/94)

XII. Calendar Items

XIII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 29, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present: L. Becker; Coffino; Gruber; Nash; Steane.
Commissioners not Present: Schlichtmann.
Staff Present: Grubb; Wolf.

Commissioner Lightner appeared on the record at 5:43 p.m.;
Commissioners How and Marshall appeared at 5:45 p.m.; and
Commissioner B. Becker at 6:30 p.m..

III. Approval of the Minutes

MSC: To approve the Minutes of March 15, 1994.
(Steane/L. Becker: 4-0)

IV. Old Business

A. 189 Parnassus Ave.#2 (cont. from 3/15/94)

This matter arose because the landlord herein asked the Board to consider the following extraordinary circumstances. A petition for certification of capital improvement costs was filed in 1988; however, the tenants of two units in the building were not included in the petition but were assessed the certified amounts. In 1993, the instant tenant filed a petition alleging an unlawful rent increase. On February 1, 1994, a conciliation agreement was reached between the parties with the assistance of a hearing officer. In that agreement, the parties agreed to the refund of all rent overcharges, and that the landlord could file a petition seeking certification of the capital improvements at issue. However, as the work had been completed more than five years ago, the recently enacted Statute of Limitations rendered the petition unsuitable for filing. The landlord therefore turned to the Commissioners for relief. After discussion, the Board passed the following motion:

MSC: In light of the fact that a Rent Board hearing officer approved a settlement that was not enforceable, to allow a capital

improvement petition to be filed for work completed more than 5 years ago because of the special circumstances present in this case. (Steane/Coffino: 5-0)

V. Consideration of Appeals

A. 347 Oak St.

O001-48A (cont. from 2/15/94)

The tenant's petition alleging unlawful increases in rent was granted by the hearing officer, and the landlord was found liable to the tenant in the amount of \$13,028.05 due to increases given under a claim of owner-occupancy exemption. On appeal, the landlord asserts that a prior Decision of Hearing Officer, issued in 1986 and upheld on appeal, that found the structure to consist of one 8-unit building rather than two 4-unit buildings was incorrect; that the hearing officer erred in considering "capital contributions" made by the prior owner's estate to be "rent"; and that there are mathematical mistakes in the decision regarding banking and the calculation of rent overpayments. The Board had continued this matter in order to obtain legal advice from the City Attorney's office regarding the issue of collateral estoppel.

MSC: To deny the appeal except for the issuance of a technical correction. (Marshall/L. Becker: 5-0)

B. 848 Divisadero St.

O001-47R (cont. from 3/15/94)

This matter was taken off calendar because the parties had informed the Deputy Director that they had reached a settlement.

C. 515 O'Farrell St. #104

O001-46R

The tenant filed a petition alleging an incorrectly calculated PG&E passthrough. The petition was denied because the hearing officer found that the Rent Board did not have jurisdiction, as the issue presented was whether the landlord was acting in violation of PUC Rule 18. The tenant appeals, reasserting that the landlord is using an unapproved method for calculating a PG&E passthrough.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

D. 2233 Divisadero St. #201

O001-47R

The tenant's petition alleging various habitability problems in the unit was denied, because the tenant had already been compensated for the service reductions in a prior case; the problems had been remedied by the time of the hearing; and/or the tenant had failed to notify the landlord regarding the problems, feeling that her repair requests would go unheeded. The tenant appeals, alleging that: the building had been declared a public nuisance, as evidenced by a BBI Notice of Violation.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

VI. Appeal Hearing

2112 - 22nd St.

O001-38A (acpt. 1/8/94)

This matter was taken off calendar because the parties had reached a settlement.

VII. Communications

The Commissioners received the following communications:

- A. A letter from a tenant expressing his unhappiness at the disposition of his appeal.
- B. A copy of Assembly Bill 3585, introduced by Assembly Member Ferguson, which would exclude individuals with "average or above-average income" from the provisions of any rent control ordinance.
- C. A Memorandum from City Attorney Louise Renne regarding the provisions of the Brown Act and other public meeting laws.

VIII. Director's Report

Executive Director Grubb reminded the Commissioners that their Conflict of Interest statements are due on April 1, 1994.

IV. Old Business) (cont.)

B. Ordinance and Rules Changes

The Commissioners discussed a draft proposal by Commissioner Lightner regarding agreements between landlords and tenants to pay additional rent for increased services, without the necessity of a hearing. After discussion, Commissioner Lightner volunteered to re-draft her proposal, limiting such agreements to capital improvements that are not habitability requirements.

IX. Remarks from the Public

Al Goodwin voiced his opinion that the public policy goal of the Ordinance is the preservation of affordable housing, and not the enforcement of building codes.

Robert Pender informed the Commissioners that signatures are being gathered for a ballot proposition in November. The proposed initiative would eliminate the owner-occupancy exemption.

X. Calendar Items

April 5, 1994

- 6:00 Appeal Hearing: 2711 Bryant St. O001-26R (acpt. 1/4/94)
Old Business:
A. 330 Ashton Ave. O001-40A (heard 3/1/94)
B. Ordinance and Rules Changes

April 12, 1994 - NO MEETING

XI. Adjournment

President Coffino adjourned the meeting at 7:40 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
April 5, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

- A. 665 Pine St. O001-48R thru -76R; O001-58 & O001-59A

Landlord and tenant appeals of a decision certifying capital improvement costs and increases due to increased operating expenses, but denying increases based on comparables.

- B. 1740 Polk St. #3 O001-77R

Tenant appeal of a decision denying her decreased services claim.

- C. 935 Kearny St. #102 O001-78 & -79R

Co-occupants of the unit appeal the denial of the portions of their petition alleging an unlawful rent increase and the landlord's failure to repair, and granting only one of many decreased services claims.

- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
- IX. Old Business
 - A. 330 Ashton Ave. (O001-40A; heard 3/1/94) - Settlement
 - B. Ordinance and Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)

- X. New Business
- XI. Calendar Items
- XII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 5, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; How; Nash; Schlichtmann; Steane.
Commissioners not Present:	Lightner.
Staff Present:	Grubb; Wolf.

Commissioner Marshall appeared on the record at 5:40 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 29, 1994 with the following correction: Section IV.B., Old Business, Ordinance and Rules Changes, should read as follows: "The Commissioners discussed a draft proposal by Commissioner Lightner regarding agreements between landlords and tenants to pay additional rent for increased services, without the necessity of a hearing. After discussion, Commissioner Lightner volunteered to re-draft her proposal.".
(Steane/How: 5-0)

IV. Consideration of Appeals

A. 1740 Polk St. #3

O001-77R

The tenant's petition alleging a substantial decrease in housing services because of the loss of the use of a courtyard and retaining wall for gardening purposes was denied by the hearing officer. The hearing officer found that the tenant had never explicitly been granted use of the areas for gardening. The tenant appeals, alleging that since the landlord had acquiesced to her gardening on the premises for three years, gardening had become a housing service reasonably to be expected. The tenant also asserts that harassment from the landlord's agent, the maintenance man, constitutes the loss of quiet enjoyment of the premises.

MSF: To accept the appeal and remand the case to the same hearing officer on the issue of acquiescence: because the landlord failed to object, did the gardening privileges become a housing service? (Coffino/B. Becker: 2-3; Gruber, How, Steane dissenting)

MSC: To deny the appeal. (How/Gruber: 3-2; B. Becker, Coffino dissenting)

B. 935 Kearny St. #102

O001-78R & -79R

The tenants' petition alleging an unlawful increase in rent, the landlord's failure to repair and decreased housing services was denied for the most part. The tenants alleged several habitability problems at the instant residential hotel, but failed to meet their burden of proof except for a problem with flying insects. The hearing officer therefore granted a \$20 per month rent reduction for the months when insect infestation is a problem. The tenants appeal, asserting that the decision is arbitrary and contrary to the uncontroverted testimony and evidence presented; that the hearing officer's decision allows the landlord to violate minimum health code standards under state law; and that the landlord is not entitled to collect any rent for the premises, as no Certificate of Occupancy has been issued.

MSC: To accept the appeal on the issue of the number of bathrooms only, and whether this condition constitutes a substantial decrease in housing services. The hearing officer shall determine whether this determination can be made on the record, or whether a new hearing should be scheduled. (How/Marshall: 5-0)

C. 665 Pine St.

O001-58 & 59A; O001-48R thru
O001-76R

Two tenants filed untimely appeals because of a miscommunication between the attorneys for the parties.

MSC: To find good cause for the late filing of the appeals. (Marshall/How: 5-0)

This case involves two landlord petitions affecting 32 units, one seeking certification of capital improvement costs and increases based on operating expenses, and one seeking increases based on comparables. Certain capital improvement costs were certified and operating expense increases were granted, but the comparables petition was denied. The landlord appeals, arguing that the subject tenancies include parking, but are at the same or less rent than similar tenancies in the building that do not include parking; and that work done to the elevator and boiler constitutes capital improvements and not "repair". Twenty-seven tenants appeal, asserting that: the law in effect at the time of the hearing should have been applied, and capital improvements

completed more than 5 years prior to the filing of the landlord's petition should not have been certified; the current landlord should not be entitled to a passthrough for capital improvement work performed by the prior owner; there is no authority in the Ordinance for the allowance of imputed interest; and any interest granted should be a rate of less than 10%.

MSC: To deny the landlord's appeal regarding the issue of rent increases based on comparable rents.
(Marshall/Coffino: 5-0)

MSC: As to the tenants' appeals: to continue consideration of the issue of whether the 5-year Statute of Limitations on capital improvement passthroughs should be applied in this case until advice can be obtained from the City Attorney's Office; to accept the appeal on the issue of how much, if any, imputed interest on capital improvement costs should be granted to the landlord, and to obtain advice from the City Attorney's office on this issue; to accept the appeals on the issue of a possible "double recovery" to the landlord due to imputed interest on capital improvement costs and an operating expense increase based primarily on an increase in debt service; and to accept the appeals on the issue of a "repayment plan" for retroactive sums owed, if necessary. To accept the landlord's appeal on the issue of whether items deemed "repair" by the hearing officer should properly be considered capital improvements. To deny the appeals as to all other issues.
(Marshall/B. Becker: 4-1; How dissenting)

V. Communications

The Commissioners received information regarding the various benefits available to City workers during the upcoming "Open Enrollment" period.

VI. Old Business

Ordinance and Rules Changes: Issues for Discussion

The Commissioners briefly discussed timelines for presenting draft proposals regarding various topics. Commissioner L. Becker volunteered to have a draft pertaining to "Notice" in the context of decreased housing services by the next meeting; Commissioner Marshall will work on issues involving living trusts and interest on capital improvements for the following meeting; Commissioner Gruber will tackle the issue of "principal place of residency" for tenants; and Commissioners B. Becker and Steane will work on a re-draft of Rules Section 6.14 by the May 3rd meeting.

VII. Calendar Items

April 12, 1994 - NO MEETING

April 19, 1994

2 appeal considerations

6:00 Appeal Hearing: 99 Jersey St. O001-45A (acpt. 2/15/94)
Old Business: Ordinance and Rules Changes

VIII. Adjournment

President Coffino adjourned the meeting at 7:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
April 19, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals
 - A. 1850 Gough St. #501 O001-80R
Tenant appeal of a decision denying a claim alleging decreased housing services.
 - B. 1301 Leavenworth St. O001-60A
Landlord appeal of a decision granting a claim of decreased housing services.
- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
- IX. Old Business
 - Ordinance and Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- X. New Business
- XI. Appeal Hearing
- 6:00 99 Jersey St. O001-45A (acpt. 2/15/94)
- XII. Calendar Items
- XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 19, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; Lightner; Schlichtmann; Steane.
Commissioners not Present:	Nash.
Staff Present:	Grubb; Wolf.

Commissioner Marshall appeared on the record at 5:45 p.m.. Commissioner How appeared at 6:50 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 5, 1994 with the following correction: the motion regarding the case at 935 Kearny St. #102 should read: "To accept the appeal and remand the case on the issue of the number of bathrooms only, and whether this condition constitutes a substantial decrease in housing services. The hearing officer shall determine whether this determination can be made on the record, or whether a new hearing should be scheduled." (Addition underlined)
(Gruber/Coffino: 5-0)

IV. Consideration of Appeals

A. 1850 Gough St. #501 O001-80R

The tenant's petition alleging a decrease in housing services because of the lack of use of a garage space was denied. The hearing officer found that the parking space the tenant currently uses was sufficient until the tenant obtained a new car, and that the landlord is under no obligation to allow the tenant to use another space formerly used by a room-mate because the current space is no longer adequate. On appeal, the tenant maintains that her lease provides her with the use of a "garage"; that her car would fit in any of the other 29 spaces at the facility; and that several spaces that would accommodate her needs are currently not in use.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

B. 1301 Leavenworth St.

O001-60A

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,450.00 due to several habitability problems in the building and the tenant's unit. The landlord appeals, alleging that: some of the damage was caused by the tenants' negligence; several of the violations were abated prior to the hearing; and the tenant's complaints were motivated by his having fallen behind in his rent, resulting in an Unlawful Detainer action having been filed.

MSC: To deny the appeal. (B. Becker/Steane: 5-0)

V. Communications

The Commissioners received the following communications:

A. The monthly workload statistics for the month of March.

B. The March issue of the San Francisco Apartment Magazine.

C. A letter from the San Francisco Tenants' Union regarding a pending case where the issue is "good faith" residency for the purposes of owner occupancy exemption from the Ordinance.

VI. Appeal Hearing

99 Jersey St.

O001-45A

Three tenants' petitions alleging decreased housing services due to the prior landlords' conversion from steam to electric heat in 1982 were granted by the hearing officer, resulting in the current landlords being found liable to each tenant in the amount of \$9,340.20. The landlords appealed the decision, asserting: landlord hardship (which claim was later withdrawn); that a 3-year Statute of Limitations or the one-year limitation contained in Rules Section 10.10(c) should apply to the refunds; and that they were prejudiced by the nine-year delay since the conversion. The Board accepted the landlords' appeal and scheduled a Board hearing on the issue of laches.

Three tenants appeared, along with their attorney; the landlords appeared with their attorney and a witness. The hearing commenced at 6:05 p.m. and concluded at 11:20 p.m. Testimony focused on what the tenants were told at the time of the conversion; why they had waited so long to exercise available remedies; alleged prejudice that had accrued to the current owners due to the lengthy delay; and whether the prior and current owners had acted with "unclean hands". At the conclusion of the hearing and after discussion, the

below motion was made. However, it was the consensus of the Board to defer voting on the motion and continue this matter until advice could be obtained from the City Attorney as to whether the tenants had to have known about their rights and failed to act in order to have engaged in an "unreasonable delay".

MS: To deny the landlords' appeal. (Marshall/B. Becker)

VII. Old Business

Due to the lateness of the hour, discussion of proposed Ordinance and Rules changes was continued to the next meeting.

VIII. Remarks from the Public

Al Goodwin voiced his opinion that, in light of the evening's appeal hearing and other similar cases, there needs to be a Statute of Limitations on decreased services and other claims.

IX. Calendar Items

April 26, 1994 - NO MEETING

May 3, 1994

3 appeal considerations

6:00 Appeal Hearing: 2711 Bryant St. 0001-26R (post. from 4/5/94)
Old Business:

A. 99 Jersey St. 0001-45A (heard 4/19/94)

B. Ordinance and Rules Changes

May 10, 1994 - NO MEETING

X. Adjournment

President Coffino adjourned the meeting at 11:30 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
May 3, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals
 - A. 1941 Mission St. #27 O001-61A

Landlord appeal of a decision granting refunds due to rent overpayments.
 - B. 1369 Hyde St. O001-62A & O001-82R

Landlord appeal of a decision certifying some but not all claimed capital improvement costs; tenant appeal on the basis of financial hardship.
 - C. 730 Eddy St. #418 O001-81R

Tenant appeal of a dismissal of the tenant's petition. The tenant failed to appear at the hearing due to a pending settlement with the landlord.
- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
 - A. 340 So. Van Ness Ave. #1 O001-99E
 - B. 2469 Folsom St. O001-34E
 - C. 1336 Hampshire St. O001-82E

IX. Old Business

A. 99 Jersey St. O001-45A (heard 4/19/94)

B. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 2711 Bryant St. O001-26R (post. from 4/5/94)

XII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 3, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Gruber; How; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	B. Becker; Coffino.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of April 19, 1994.
(Marshall/Schlichtmann: 5-0)

IV. Remarks from the Public

Robert Pender announced the formation of the Political Action Committee, "Tenants for Rental Justice", and invited the Commissioners to sign a petition proposing amendments to the Rent Ordinance to go on the June ballot.

V. Consideration of Appeals

A. 1941 Mission St. #27 O001-61A

The tenant's petition alleging unlawful increases in rent was granted by the hearing officer and the landlord was found liable to the tenant in the amount of \$5,101.58. The landlord appeals, asserting that since he has only managed the building for the past five years, he should not be held responsible for refunds due to illegal increases given by the prior management of the property.

MSC: To deny the appeal. (Schlichtmann/Marshall: 5-0)

B. 1369 Hyde St. O001-62A & O001-82R

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. The cost of certain items was denied due

to: lack of requisite documentation; the possibility of "double recovery", as some of the work was done by in-house management employees of the landlord; and the finding of the hearing officer that certain items were actually repairs, and not capital improvements. The landlord appeals, asserting that he is being penalized for effectuating the work economically; that prior Rent Board hearing officers have accepted the check register of the management company in lieu of canceled checks; and that the decision was issued in an untimely manner. One tenant appeals the decision on the basis of financial hardship.

MSC: As to the landlord's appeal: to accept the appeal and remand the case to the same hearing officer for a new hearing on the issue of the cost of painting the common area hallways of the building. The Rent Board Estimator shall be contacted to ascertain the reasonable cost of materials and labor for a job of this size. The labor cost that shall be certified shall be the actual labor cost of the landlord's in-house employee, adjusted for benefits such as payroll taxes, workers' compensation, etc. To deny the landlord's appeal as to all other issues.
(Schlichtmann/Lightner: 5-0)

MSC: To accept the tenant's hardship appeal and schedule a Board hearing. (Schlichtmann/Marshall: 5-0)

C. 730 Eddy St. #418

O001-81R

The tenant's petition alleging an unlawful rent increase was dismissed, due to the failure of the parties to appear at the properly noticed hearing. On appeal, the tenant's attorney explains that the non-appearance was due to on-going settlement negotiations. Counsel for the tenant therefore requests that the dismissal be vacated, and the settlement entered into by the parties be the Board's decision in this matter.

MSC: To vacate the Dismissal issued by the hearing officer on February 2, 1994 and accept the settlement of the parties as the Board's decision in this case. (Marshall/Lightner: 5-0)

VI. Old Business

A. 99 Jersey St.

O001-45A (heard 4/19/94)

This matter was heard on April 19th and continued to order to obtain advice regarding the laches defense from the City Attorney. Commissioner Schlichtmann outlined her opinions and concerns in the presence of counsel for the parties, who were encouraged to attempt to reach a settlement in this case. As both attorneys indicated a willingness to negotiate, this matter was continued to the May 17th meeting.

VII. Communications

The Commissioners received a letter from Attorney Robert DeVries challenging their right to discuss the case at 665 Pine Street (O001-58 and -59A; O001-48R through -76R) in Executive Session.

VIII. Director's Report

The Executive Director reported as follows:

A. A proposed amendment to Chapter 49 of the S.F. Administrative Code, governing interest payments on security deposits, was defeated by a 5-3 vote of the Board of Supervisors.

B. The Board of Supervisors approved the imposition of liens on those properties whose owners were delinquent in the payment of the Rent Board unit fee.

C. Staff will be conducting a Landlord Workshop for property owners and managers at the Rent Board office on May 12th from 9:00 a.m. to 12:00 noon.

IX. Consideration of Allegations of Wrongful Evictions

A. 340 So. Van Ness Ave. #1 O001-99E

The relationship between the tenant and the landlord in this case has been acrimonious and marked by several petitions alleging decreased housing services and a prior wrongful eviction attempt. In the instant case, the hearing officer found that the landlord was not seeking to recover possession of the unit in good faith: that the tenant had not created a nuisance on the property; that the landlord had not fulfilled the technical requirements for removal of the property from rental use; and that the dominant motive for the eviction attempt was monetary, and not because the landlord sincerely desired the unit for her own use. The hearing officer and Eviction Unit Supervisor recommended that another strongly-worded letter be sent to the landlord; that the Eviction Unit continue to monitor this case; and that the Commissioners refer this case to the District Attorney if the eviction attempt is not withdrawn.

MSC: To accept staff's recommendations in this matter.
(Marshall/Gruber: 5-0)

B. 2469 Folsom St. O001-34E

This case involves an attempt to evict the tenant for owner and relative occupancy. Presently, the elderly owners and their son live in the middle flat of a five-unit building. Both the father and the son have submitted uncontroverted evidence that there are legitimate medical reasons for their desiring the tenant's lower unit. However, the hearing officer found that the parties have not complied procedurally with the Ordinance and have made several contradictory statements. Since the time of the hearing, it appears that a comparable unit in another building owned by the landlords has become vacant. The hearing

officer and Eviction Unit Supervisor recommended that the staff closely monitor this case and that a letter be sent to the landlord, after conferring with the tenant to ascertain the current status of the case.

MSC: To accept the recommendation of staff in this case.
(Gruber/Marshall: 5-0)

C. 1336 Hampshire St. O001-82E

This case involved an eviction attempt for occupancy by the landlord's son. At the time of the hearing, the landlords had filed an Unlawful Detainer action. As the parties reached a settlement, no further action by the Board was required.

X. Appeal Hearing

2711 Bryant St. O001-26R (post. from 4/5/94)

The tenant appealed the certification of a capital improvement passthrough in the amount of \$8.52 per month on the basis of financial hardship. Two prior Board hearings were postponed at the tenant's request due to medical problems she was experiencing. The landlord appeared at the properly scheduled hearing; the tenant failed to make an appearance, although the Commissioners waited for one hour after the scheduled commencement time to make the following motion:

MSC: To dismiss the tenant's appeal with prejudice; the hearing officer's decision is therefore final. (Lightner/Gruber: 5-0)

XI. New Business

Commissioner Lightner introduced the topic of passthroughs related to property tax increases resulting from the passage of bond measures on the ballot. She suggested taking up this topic, along with other possible Rules and/or Ordinance changes, at a Special Meeting on May 10, 1994.

MSC: To hold a Special Meeting on May 10, 1994 at 5:30 p.m. to discuss possible changes to the Rules and Regulations.
(Lightner/Gruber: 5-0)

XII. Calendar Items

May 10, 1994

SPECIAL MEETING: Proposed Rules Changes

Old Business: Ordinance and Rules Changes: Issues for Discussion

May 17, 1994

Executive Session: 665 Pine St. (O001-48R thru -76R; O001-58A & -59A)
(cont. from 4/5/94)

4 appeal considerations

Old Business:

A. 99 Jersey St. O001-45A (cont. from 5/3/94)

B. Ordinance and Rules Changes: Issues for Discussion

XIII. Adjournment

Vice-President L. Becker adjourned the meeting at 7:40 p.m.

**NOTICE OF A SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
May 10, 1994
25 Van Ness Avenue, #70, Lower Level

**AGENDA
SPECIAL MEETING**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. New Business

Proposed Changes to the Rules and Regulations

Discussion concerning proposed changes to the Rules and Regulations, including but not limited to Sections 6.10, 10.14 and 11.16(b) as they affect operating and maintenance expense passthroughs.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
 - Ordinance and Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- IX. New Business
- X. Calendar Items
- XI. Adjournment

**MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 10, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: B. Becker; L. Becker; Gruber; Lightner;
Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present: Coffino.
Staff Present: Wolf.

Commissioner How appeared on the record at 6:40 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 3, 1994 with the following corrections: Regarding the case at 1369 Hyde Street (O001-62A), the motion should read as follows: As to the landlord's appeal: to accept the appeal and remand the case to the same hearing officer for a new hearing on the issue of the cost of painting the common area hallways of the building. The Rent Board Estimator shall be contacted to ascertain the reasonable cost of materials and the number of hours it would take to perform a job of this size. The labor cost that shall be certified shall be the actual labor cost of the landlord's in-house employee, adjusted for benefits such as payroll taxes, workers' compensation, etc. To deny the landlord's appeal as to all other issues. (changes underlined) Under "Remarks from the Public", the ballot referred to is the November ballot, and not the June ballot.
(Schlichtmann/Lightner: 5-0)

IV. Remarks from the Public

Robert Pender of the Tenants' Network expressed his opinion that the Rent Board's posting of the Notice of Special Meeting only twenty-four hours in advance of the meeting was inadequate, although that is the timeline mandated by the Sunshine Ordinance.

V. New Business

The subject of proposed changes to the Rules and Regulations, specifically the issue of allowing landlords an easier vehicle for recovery of bond and special assessment district-related property tax increases, was discussed in light of a draft proposal distributed by Commissioner Lightner. It was explained that, from the landlords' perspective, it is felt to be unfair that tenants can vote for passage of bond measures to finance city-wide improvements that will be paid for only by property owners. Therefore, landlords' organizations have taken positions opposing bond measures on the ballot, regardless of their merit. At present, a campaign opposing the school bonds on the June ballot is being readied. Additionally, the Mayor needs to make budgetary decisions regarding the housing of San Francisco prisoners, and needs to reduce organized opposition to a jail bond measure planned for the November ballot. It is felt that the current operating and maintenance expense petition is too cumbersome a vehicle for passing through small costs of this type, as aggregation of all expenses is currently required.

The Deputy City Attorney commented on problems with the draft proposal presented: the "disaggregation" of expenses into four different types of petitions is not clearly authorized in the Ordinance; the elimination of the requirement of a hearing by additions to Rules Section 11.16(b) runs counter to Ordinance Section 37.3(a)(7); and there is no authority in the Ordinance for a tenant hardship petition. After discussion, the Commissioners passed the following motion:

MSC: To hold a Public Hearing on May 24th at 6:30 p.m. To put out the draft proposal submitted by Commissioner Lightner in two versions: one limited to changes to Section 6.10 of the Rules and Regulations only; and one with changes to Sections 6.10, 11.16(b), and the addition of new Section 10.14; in addition to any other versions submitted by the staff or other Commissioners in a timely fashion. (Lightner/Gruber: 5-0)

VI. Communications

The Commissioners received a chart from the Executive Director showing several examples of property tax increases resulting from the passage of bond measures.

IV. Remarks from the Public (cont.)

Brook Turner of Property Owners Against Successive Taxation and Tim Carrico of the S.F. Apartment Association commented on the fundamental fairness principle involved in providing owners with a more accessible method for obtaining increases due to bond-related property tax increases. Robert Pender invited the Commissioners to attend a meeting of the Tenants' Network the following evening.

VII. Calendar Items

May 24, 1994

6:30 Public Hearing: Proposed Rules Changes Pertaining to O&M Increases

May 31, 1994

5 appeal considerations

6:00 Appeal Hearing: 1369 Hyde St. #52 O001-82R (acpt. 5/3/94)

Eviction Reports

Old Business: Ordinance & Rules Changes

VIII. Adjournment

Vice-President L. Becker adjourned the meeting at 8:50 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

**Tuesday, 6:00 p.m.,
May 17, 1994
25 Van Ness Avenue, #70, Lower Level**

AGENDA

- I. Call to Order
- II. Roll Call
- III. Executive Session
- 6:00 Significant Exposure to Litigation
Govt. Code Section 54956.9(b)(1)
(6,466 potential cases)
- IV. Approval of the Minutes
- V. Remarks from the Public
- VI. Consideration of Appeals
 - A. 665 Pine St. O001-458R thru -76R;
O001-58 & 59A
(cont. from 4/5/94)
 - B. 3718 - 24th St. O001-83R

Tenant appeal of a decision denying her petition alleging
decreased housing services.
 - C. 520 Taylor St. O001-63A

Landlord appeal of a decision denying rent increases based on
alleged increased operating expenses, but determining
overpayments due to unlawful rent increases.
 - D. 175 - 6th St. #221 O001-84R

Tenant appeal of a dismissal of his decrease in services petition
due to failure to appear at the hearing.
 - E. 942 Hayes St. #39 O001-64A

Landlord appeal of a remand decision certifying capital improvement costs but determining rent overpayments.

VII. Communications

VIII. Director's Report

IX. Old Business

A. 99 Jersey St.

O001-45A (cont. from 5/3/94)

B. Ordinance and Rules Changes: Issues for Discussion

V. Remarks from the Public (cont.)

X. New Business

XI. Calendar Items

XII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 17, 1994 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present: L. Becker; Coffino; Gruber; How; Lightner;
Marshall; Nash; Schlichtmann; Steane.
Staff Present: Grubb; Wolf.

Commissioner B. Becker appeared on the record at 6:20 p.m.
Commissioner Schlichtmann left the meeting at 7:00 p.m.

III. Executive Session

The Executive Session calendared for 6:00 p.m. was taken off calendar prior to the meeting.

IV. Approval of the Minutes

MSC: To approve the Minutes of May 10, 1994 with the following corrections: Under "Remarks from the Public", the name of Brook Turner's organization should be "Property Owners Against Excessive Taxation", instead of "Successive", and the following Calendar Items should have been listed for the May 17th meeting: Executive Session; 4 appeal considerations; Old Business: 99 Jersey St. (O001-45A) and Ordinance and Rules Changes.
(L. Becker/Lightner: 5-0)

MSC: To correct the Minutes of May 3, 1994 as follows: At the conclusion of the appeal hearing regarding 99 Jersey St. (O001-45A), President Coffino was recused from deliberations regarding the case pursuant to a request from the tenants. A motion to recuse President Coffino from consideration of the matter was made by Commissioner Marshall, seconded by

Commissioner Lightner, and passed by a 5-0 vote of the Board.
(L. Becker/Lightner: 5-0)

V. Old Business

A. 99 Jersey St. O001-45A (cont. from 5/3/94)

The Commissioners asked the attorneys for the landlords and the tenants for an update as to the progress of settlement negotiations. Counsel for both sides informed the Board as to the difficulties they were encountering in reaching settlement; indicated a willingness to attend a mediation with the Executive and Deputy Directors; and briefly discussed the legal issues in the case. Commissioner Schlichtmann addressed a letter from the tenants' attorney, in which he expressed his frustration at the formality of the hearing procedures, which he believed were in conflict with the Notice of Appeal Hearing sent by the Board. In order that all arguments and evidence can be proffered, and in order for the attorneys to brief the issue of whether the equitable defense of laches acts as a total bar or can be only a partial bar to relief, briefs of no more than ten pages will be submitted no later than June 7, 1994. Consideration of this matter was therefore continued to the meeting of June 14th.

VI. Consideration of Appeals

A. 665 Pine St. O001-58A & -59A;
O001-48R thru -76R
(cont. from 4/5/94)

The Commissioners discussed a pending court action, wherein the attorney for the tenants in this case was contesting the Board's right to discuss this matter with their City Attorney in Executive Session. As the Commissioners had received a Confidential Memorandum from the City Attorney regarding some of the legal issues in this case, and none of them had any additional questions, the following motion was passed:

MSC: To remove the Executive Session that was to be held in order to discuss legal issues pertaining to the case at 665 Pine St. from the calendar, as it is no longer necessary.
(Marshall/Coffino: 5-0)

B. 3718 - 24th St. O001-83R

The tenant's petition alleging various decreases in housing services was denied by the hearing officer, because the issues had already been litigated in prior cases; the problems were found not to be substantial; and/or the tenant failed to meet her burden of proof. On appeal, the tenant asserts that the hearing officer had incomplete information on which to base her decision, because the tenant's illnesses prevented her from furnishing documentation to support her case; and that the hearing officer misinterpreted certain facts that can be proven to be untrue.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

C. 520 Taylor St.

O001-63A

The landlord's petition for rent increases due to increased operating and maintenance expenses was denied because the hearing officer found that the landlord had failed to provide adequate proof of his actual costs. Rent overpayments in the amount of \$4,289.43 were determined for the tenant in unit #303. The landlord appeals, and claims that: the increase in debt service resulting from the purchase of the property would be sufficient to warrant the maximum allowable operating expense increase; the burden of proving the aggregate of all costs is too strenuous, especially for a new owner; the Decision of Hearing Officer was not issued in a timely manner; unlawful rent increases were not at issue because the tenant had not filed a petition asserting this claim, and liability for refunds of rent overpayments should be barred by the Statute of Limitations found in Civil Code Section 1947.11(c); the S.F. Rent Ordinance is unconstitutional because it does not provide for a "fair rate of return"; and the "business records exception" should apply to certain evidence deemed to be hearsay by the hearing officer.

MSC: To deny the landlord's appeal regarding the operating and maintenance expense increases; to accept the landlord's appeal regarding the issue of the unlawful rent increases and remand the case to the same hearing officer for a new hearing to consider the equitable defense of laches.
(Marshall/B. Becker: 5-0)

D. 175 - 6th St. #221

O001-84R

The tenant's petition alleging a substantial decrease in housing services was denied due to his failure to appear at the properly noticed hearing. On appeal, the tenant asserts that there are irregularities concerning the heat in the unit and that the rent is too high for the size of the room. At the time he filed his appeal, the tenant had indicated to a counselor that he had not received notice of the hearing. The tenant had not responded to a letter drafted by the Deputy Director; however, it was the consensus of the Commissioners to continue this matter to the next meeting to permit another letter to be sent by staff.

E. 942 Hayes St. #39

O001-64A

The landlord filed a petition for certification of the cost of an exterior paint job, which was denied due to lack of documentation. The decision noted that excessive rent increases may have been imposed. On appeal, the landlord provided new evidence and the case was remanded to the same hearing officer for a new hearing. In the remand decision, the cost of the paint job was certified but the landlord was found liable to one tenant in the amount of \$2,535.30 due to rent overpayments. The landlord appeals the remand decision, asserting that

he made an error in the rent history, because he had insufficient time to prepare his case.

MSC: To accept the landlord's appeal and remand the case to the same hearing officer on the issue of the rent history; if the parties stipulate as to the relevant facts, then the matter shall be corrected on the record. If the landlord and tenant fail to agree as to the rent history, then a new hearing on this issue shall be held before a new hearing officer.
(Lightner/Marshall: 5-0)

VII. Communications

The Commissioners received the workload statistics for the month of April.

VIII. Director's Report

Executive Director Grubb informed the Board that a successful landlord workshop was held at the Rent Board office on May 12, 1994.

V. Old Business (cont.)

B. Proposed Changes to the Rules and Regulations

The Commissioners discussed proposed changes to the Rules and Regulations, specifically the issue of allowing landlords an easier vehicle for recovery of bond and special assessment district-related property tax increases. Four versions of changes, primarily to Section 6.10 of the Rules, have been put out for discussion at a Public Hearing to be held on May 24, 1994 at 6:30 p.m.

IX. Remarks from the Public

Al Goodwin expressed his concern that the Commission is moving forward on increases related to the passage of bond measures with undue haste, and that they don't understand the concept well enough to go forward at this time. In his opinion, most of the proposals that have been put forward are "gobbledygook".

X. Calendar Items

May 24, 1994

6:30 Public Hearing: Proposed Rules Changes Pertaining to O&M Increases

May 31, 1994

5 appeal considerations

6:00 Appeal Hearing: 1369 Hyde St. #52 O001-82R (acpt. 5/3/94)

Eviction Reports

Old Business: Ordinance & Rules Changes

June 7, 1994 - ELECTION DAY, NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 8:20 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 6:00 p.m.,
May 24, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Public Hearing
- 6:30 Proposed Changes to the Rules & Regulations Pertaining to Rent
Increases Based on Increased Operating & Maintenance
Expenses
- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)
- IX. New Business
- X. Calendar Items
- XI. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, May 24, 1994 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 6:35 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; How; Lightner; Marshall; ; Schlichtmann; Steane.
Commissioners not Present:	Nash.
Staff Present:	Grubb; Wolf.

III. Public Hearing

A Public Hearing was held on proposed changes to the Rules and Regulations, specifically the issue of allowing landlords an easier vehicle for recovery of bond, parcel tax and special assessment district-related property tax increases. Four versions of changes, primarily to Section 6.10 of the Rules, were put out for review. Public comment commenced at 6:40 p.m.

Nineteen tenants, tenant attorneys, or representatives from various tenant organizations, spoke against the proposals. The dominant sentiments expressed were as follows: there is already a mechanism in the Rules and Regulations for rent increases due to increases in property taxes; this is a matter more properly before the Board of Supervisors; a "fair share" of the property tax increase would not be 100%; landlords can deduct expenses from their income taxes; the Rent Ordinance is extremely liberal regarding permissible increases; and tenants cannot afford to pay higher rents. Randy Shaw of the Tenderloin Housing Clinic and two other individuals threatened litigation should the Board adopt any proposal allowing rent increases for bond-related property tax increases, other than through the existing operating expense petition mechanism, which requires that all expenses related to the property be aggregated.

Thirteen landlords, landlord attorneys, representatives from various landlord organizations, or public officials, spoke in favor of one or more of the proposals. The viewpoints expressed included the following: the beneficiaries of municipal services should pay their fair share; until a solution allowing a 100% passthrough of these costs is found, bond issues will be fought, regardless of

their merits; the amounts that tenants will pay are very small, and very few landlords will actually file petitions on this basis, but they should have a right to do so; the passthroughs should become part of base rent in order to reduce the risk of inadvertent errors; many of the Board's present Rules exceed the scope of the Commission's rule-making authority as much if not more than the present proposals; and increases pursuant to parcel taxes and the creation of special assessment districts are fundamentally the same as bond-related increases, and therefore all three should be included.

After a break, President Coffino distributed a revised version of Proposal #2: the major changes included the addition of fees imposed under a special assessment district; the increase not becoming part of base rent; and the obligation to re-calculate the increase each year to adjust for any increases or decreases. The public was given an opportunity to speak to the merits of this revised Proposal #2, and then the Public Hearing was closed at 10:10 p.m. After lengthy discussion, the Board passed the following motion:

MSC: To adopt Revised Proposal #2, including the addition of language pertaining to special assessment district-related fees, and the necessity of annual recalculation of the amount.
(Coffino/Lightner: 3-2; B. Becker, Marshall dissenting)

The complete text of amended Section 6.10 is as follows below:

AMENDMENTS TO RULES AND REGULATIONS SECTION 6.10
[additions underlined]

PART 6 RENT INCREASE JUSTIFICATIONS

Section 6.10 Operating and Maintenance

(Subsection (a) amended effective February 28, 1989; Subsections (b), (c) and (d) amended February 21, 1989; Subsections (e) and (g) amended February 28, 1989, Subsection (f) renumbered February 28, 1989; Subsections (a) and (b) amended and Subsection (h) added May 24, 1994.)

Except in extraordinary circumstances, the following guidelines shall apply to increases based upon Operating and Maintenance expenses:

(a) A rent increase may be considered justified if it is found that the aggregate cost of operating and maintenance expenses (including but not limited to real estate taxes, exclusive of taxes imposed after May 31, 1994 pursuant to a voter-approved bond issue and parcel taxes or fees imposed under a special assessment district, whether voter-approved or approved by the Board of Supervisors, water, sewer service charge, janitorial service, refuse removal, elevator service, security system and debt service) has increased over a 12-month period preceding the date of filing the petition ("Year 2"), compared to the operating and maintenance expenses incurred in the 12 months prior to Year 2 ("Year 1"), in a percentage amount of the tenant's rent above the percentage amount equal to the allowable annual rent increase. Alternatively, the immediately preceding two calendar years may be used. Use of a particular calculation period in order to create exaggerated results is disfavored. To determine the per unit increase, this cost increase is divided by 12 months, then divided by the number of units in the building. Only those tenants in residence during Year 1 may be assessed an operating and maintenance increase, except in cases of change of ownership following commencement of tenancy.

(b) Operating expense increases shall be based on actual costs incurred by the landlord, prorated on a monthly basis where appropriate, allocated over the period of time the services were substantially rendered and/or the costs were substantially incurred in a manner that allows a fair comparison between Year 1 and Year 2. For example, the cost of refuse removal shall be allocated to the time periods when refuse removal occurred, the cost of insurance premiums shall be allocated to the period of coverage, the cost of repair work shall be allocated to the time when the work was performed, and the cost of property taxes, including supplemental taxes, shall be allocated to the applicable tax year (regardless of when the tax bill was received or paid). Proof of payment shall be required, and prospective increases shall not be considered, except that property taxes based upon supplemental tax bills not yet received and/or due and payable by the landlord shall be taken into account. All references to property taxes in this subsection are exclusive of taxes imposed after May 31, 1994, pursuant to a voter-approved bond issue and parcel taxes or fees imposed under a special assessment district, whether voter-approved or approved by the Board of Supervisors (referred to herein as "Special Real Estate Taxes").

(c) In the event that operating and maintenance expenses have increased (as set forth above), a rent increase based on these expenses will be allowed only if the per unit increase amount exceeds that which has already been allowed by the annual rent increase, in which event only the amount over the annual rent increase amount will be allowed. If the per unit increase does not exceed the amount allowed by the annual rent increases, then only the annual rent increases will be allowed.

(d) If the amount justified per unit exceeds the tenant's annual rent increase, an additional increase may be allowed. In no event shall this additional increase allowed for operating and maintenance costs result in an increase which exceeds the tenant's base rent by more than an additional 7% beyond the annual allowable increase.

(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice.

(f) However, when the unit is purchased after June 13, 1979, and this purchase occurs within two (2) years of the date of purchase of the unit by the seller of the unit to the landlord, consideration shall not be given to the portion of increased debt service which results from a selling price which exceeds the seller's purchase price by more than the percentage increase in the CPI between the date of previous purchase and the date of current sale plus the cost of capital improvements, rehabilitation and/or energy conservation work made or performed by the seller.

(g) Generally, an increase in debt service to obtain funds in excess of existing financing, will only be considered as a justification for a rent increase if the proceeds of the borrowing are or have been reinvested in the building for purposes of needed repairs and maintenance, or capital improvements. If any of the proceeds are, however, used for capital improvements, the limitations set forth in Part 7 below shall apply to that portion.

(h) Notwithstanding subsections (a), (b) and (d) above, a rent increase may be considered justified if it is found that the cost of Special Real Estate Taxes has increased due to an increase in the millage rate (as defined below) and/or increase in parcel taxes, occurring after May 31, 1994. For purposes of this rule, the millage rate is defined as the portion of the ad valorem property tax rate in excess of the basic 1% property tax rate authorized pursuant to Section 1 (a) of Article XIII A of the California Constitution. All components of the real property tax, other than those described in the first sentence of this subparagraph (h), shall not be included in the calculation of an increase in real property taxes under this subsection (h), but shall be included in the calculation of operating and maintenance expenses under subsections (a), (b), (c) and (d) above.

(1) For purposes of determining the operating expense increase based on an increase in the millage rate and an increase in parcel taxes, comparison may be made between a tax year preceding the date of filing the petition ("Year 2") and the tax year immediately preceding Year 2 ("Year 1"). A tax year begins on July 1 and ends on June 30. Comparison may also be made between non-tax years; provided, however, that the selection of non-tax year periods does not create exaggerated results.

(2) To determine the per unit increase, the portion of the property tax bill attributable to Special Real Estate Taxes shall be calculated as follows for Year 1 and Year 2: for voter-approved bond issues and special assessment districts, whether voter-approved or approved by the Board of Supervisors, the assessed value of the property as it appears on the property tax bill shall be multiplied by the millage rate; for parcel taxes, by reference to the amounts specified on the property tax bill. The resulting total shall be referred to herein as the "Special Tax Amount." Any increase in the Special Tax Amount from Year 1 to Year 2 shall be divided by twelve months and then divided by the number of units in the building. The resulting amount is the per unit increase.

(3) A rent increase based on an increase in the Special Tax Amount shall be allowed regardless of whether the per unit increase from Year 1 to Year 2 exceeds the tenant's annual rent increase. However, no rent increase based on an increase in the Special Tax Amount shall exceed the tenant's base rent by more than 7%. Furthermore, any rent increase based on an increase in the Special Tax Amount shall take into account any rent increase based on other increased operating and maintenance expenses and vice versa. In no event may a landlord increase a tenant's base rent by more than 7% annually based on totalled increased operating and maintenance expenses, including an increase in the Special Tax Amount.

(4) Only those tenants in residence during Year 1 may be assessed an increase based on an increase in the Special Tax Amount, except in cases of change of ownership following commencement of the tenancy. The increase may only be imposed at the time of an annual rent increase and shall not become part of the tenant's base rent. The increase shall be in effect for a 12-month period, at which time it shall be re-noticed or discontinued. Any such increase shall be recalculated each year by the owner to determine whether there have been any increases or decreases in the Special Tax Amount.

(5) All petitions based on an increase in the Special Tax Amount shall be scheduled for a hearing unless all parties agree in writing to waive their right to a hearing and all parties stipulate in writing to the relevant facts. The written waiver and stipulations shall be filed with the petition, on a form provided by the Rent Board. In such cases, a written decision based on the stipulations shall be issued by the hearing officer pursuant to Section 11.16(b). The decision would be subject to appeal pursuant to Ordinance Section 37.8(f).

(6) The landlord has the burden of proof in establishing an increase in the Special Tax Amount. Proof of cost and proof of payment shall be required.

Commissioners B. Becker and Marshall stated that they would have voted for the proposal if it had included a 50-50 split of the cost or had just included property tax increases resulting from bond measures. Commissioner B. Becker brought up the possibility of the Commission going to the Board of Supervisors for an Ordinance change allowing tenant hardship petitions as a defense to any regular or bond-related operating expense petition, which provision was included as part of the original landlord proposal. The following motion was made and seconded, but discussion was tabled to the May 31st meeting:

MS: To approach the Board of Supervisors for an Ordinance change allowing tenant petitions as a defense to any regular or bond-related operating expense petition. (B. Becker/Marshall:)

IV. Calendar Items

May 31, 1994

5 appeal considerations

6:00 Appeal Hearing: 1369 Hyde St. #52 O001-82R (acpt. 5/3/94)

Eviction Reports

Old Business: Ordinance & Rules Changes

June 7 1994 - ELECTION DAY - NO MEETING

V. Adjournment

President Coffino adjourned the meeting at 11:15 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
May 31, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 175 - 6th St. #221 O001-84R (cont. from 5/17/94^o)

Tenant appeal of a dismissal of his decrease in services petition due to failure to appear at the hearing.

B. 1750 Vallejo St. O001-65A

The landlord and fourteen tenants appeal the hearing officer's decision certifying the costs of certain capital improvements and earthquake-related repairs.

C. 405 Davis Court #1205 O001-66A

Landlord appeal of a decision granting a rent reduction due to a substantial decrease in housing services.

D. 711 Post St. #414 O001-98R

Tenant appeal of a dismissal of his petition alleging unlawful rent increases due to his failure to appear at the hearing.

E. 1625 Noe St. O001-67A

Landlord appeal of a decision granting rent reductions due to decreased housing services.

F. 105 Edinburgh St. O001-68A

Landlord appeal of a decision regarding a tenant's claim of failure to repair, and determining rent overpayments.

- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
 - A. 125 Judson Ave. O001-04E
 - B. 1355 McAllister St. O002-60E
- IX. Old Business
 - Ordinance & Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- X. New Business
- XI. Appeal Hearing
- 6:00 1369 Hyde St. #52 O001-82R (acpt. 5/3/94)
- XII. Calendar Items
- XIII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 31, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:45 p.m.

II. Roll Call

Commissioners Present: B. Becker; L. Becker; Coffino; Gruber;
Lightner; Nash; Schlichtmann; Steane.
Commissioners not Present: How; Marshall.
Staff Present: Wolf.

Commissioner Schlichtmann went off the record at 8:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 17, 1994.
(Gruber/Steane: 5-0)

MSC: To approve the Minutes of May 24, 1994 with the following corrections: the motion passed by the Board after the conclusion of the Public Hearing should read: "To adopt Revised Proposal #2, including the addition of language pertaining to parcel taxes . . ." (correction underlined); Commissioners B. Becker and Marshall did not support the motion because it failed to include a split of the cost and/or was not limited to bond measures; and the motion made by Commissioner B. Becker and seconded by Commissioner Marshall should read as follows: "To approach the Board of Supervisors for an Ordinance change allowing tenant hardship petitions as a defense to any regular or bond-related operating expense petition" (addition underlined).
(Coffino/Gruber: 5-0)

IV. Consideration of Appeals

A. 175 - 6th St. #221

O001-84R (cont. from 5/17/94)

The tenant's petition alleging a substantial decrease in housing services was denied due to his failure to appear at the properly noticed hearing. On appeal,

the tenant asserts that there are irregularities concerning the heat in his unit and that the rent is too high for the size of the room. At the time he filed his appeal, the tenant had indicated to a counselor that he had not received notice of the hearing. The tenant had not responded to a letter drafted by the Deputy Director; however, it was the consensus of the Commissioners to continue this matter to the next meeting to permit another letter to be sent. No response was received to the second letter as well.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

B. 1750 Vallejo St.

O001-65A & O001-85R thru -97R

The landlord's petition for certification of capital improvement and earthquake-related repair costs was granted, in part, by the hearing officer. Two tenants appeal the decision on the basis of financial hardship, as well as grounds enumerated by twelve other tenants, including the following assertions: the 5-year Statute of Limitations on capital improvement passthroughs should be applied, since it was in effect at the time the petition was amended; the hearing officer erred in granting overhead and oversight charges for the landlord's employees and management company; the existing carpeting was in good condition and not in need of replacement, nor was the new awning necessary; the estimator retained by the Rent Board is biased; 10% imputed interest should not have been awarded; and certain items were actually repairs necessitated by deferred maintenance. The landlord also appeals, alleging that: the hearing officer erred in categorizing substantial elevator renovations as routine repairs rather than capital improvements; the landlord's actual costs should have been certified, rather than the amounts found to be reasonable by the estimator; the cost for plumbing work in one of the tiers should have been certified, despite one of the tenant's assertions that she didn't remember the work being done, as it was performed at the same time as other work that was certified; and costs for a new garage ventilation system and emergency boiler repair work should have been certified.

MSC: To accept the hardship appeals of the tenants in unit numbers 105 and 306 and schedule a Board hearing. As to the tenants' appeals, to accept the appeals and schedule a Board hearing on the following issues: issue #4 raised in the tenants' appeal, regarding the correct base rent for the tenants in unit numbers 501 and 304; issue #10 regarding the passthrough for the tenant in Unit B; and issue #2 regarding the allowance of imputed interest at 10%. As to the landlord's appeal, to accept the appeal and schedule a Board hearing on the following issues: issue #1 raised in the landlord's appeal, regarding the finding that substantial elevator renovations were repairs rather than capital improvements; issue #2 regarding the certification of the lesser of the landlord's cost or the estimator's valuation; and issue #4a, regarding the failure to certify the amount of \$414.75 as part of new garage ventilation.
(Steane/B. Becker: 5-0)

V. Appeal Hearing

1369 Hyde St. #52

O001-82R

The tenant appealed the certification of a capital improvement passthrough in the amount of \$7.18 per month on the basis of financial hardship. The tenant and landlord appeared at the appeal hearing, representing themselves. The hearing commenced at 7:15 p.m. and concluded at 7:30 p.m. The tenant has been diagnosed with a fatal illness, and his only income is \$827.00 per month in Social Security benefits. Therefore, the Commissioners passed the below motion:

MSC: To find sufficient hardship in this case to warrant permanent deferral of the certified capital improvement passthrough to this tenant. (Coffino/Steane: 5-0)

IV. Consideration of Appeals (cont.)

C. 405 Davis Ct. #1205

O001-66A

The tenant's petition alleging decreased housing services was granted, in part, by the hearing officer and the tenant was granted a one-time \$10.00 rent reduction for a one-week period when security services were reduced due to the doorman being on vacation. On appeal, the landlord alleges that it is inappropriate for the hearing officer to make decisions based on what she believes management policy should have been, and that there was actually no substantial diminution in service.

MSC: To accept the appeal and remand the case to the same hearing officer with the sense of the Board that, absent other facts not in the record at the present time, these circumstances do not constitute a substantial decrease in housing services. (Lightner/Gruber: 3-2; B. Becker, Coffino dissenting)

D. 711 Post St. #414

O001-98R

The tenant's petition alleging an unlawful increase in rent was denied due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant maintains that he assumed that this would be a general hearing, and that other tenants in the building would be present to represent him.

MSC: To accept the appeal and remand the case for a new hearing. (Gruber/Steane: 5-0)

E. 1625 Noe St.

O001-67A

The tenants' petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenants in the

amount of \$1,650.00 due to several unabated code violations in the unit. On appeal, the landlord maintains that, since there is heat in the unit, the tenants should not be entitled to a rent reduction due to the lack of a thermostat, shut-off valve, defective damper and inadequate wiring.

MSC: To deny the appeal. (Gruber/Coffino: 5-0)

F. 105 Edinburgh St.

O001-68A

The tenant's petition alleging the landlord's failure to make requested repairs was rendered moot by the fact that the rent increase noticed by the landlord was null and void. However, in the Decision of Hearing Officer, certain rent reductions granted for decreased housing services in a prior case were determined to still be warranted. On appeal, the landlord asserts that the hearing officer was in error as to the amounts still owing to the tenant due to rent reductions granted in the prior decision, because the tenant had paid different amounts than had been testified to at the hearing.

MSC: To accept the appeal and remand the case to the same hearing officer on the issue of the amounts owing.
(Coffino/Lightner: 5-0)

VI. Communications

The Commissioners received a letter from tenant Justine Weldon of 760 North Point, who has been involved in several prior Rent Board cases.

VII. Director's Report

Deputy Director Wolf reported on the status of the settlement negotiations concerning the case at 99 Jersey Street (O001-45A).

VIII. Consideration of Allegations of Wrongful Evictions

A. 125 Judson Ave.

O001-04E

The tenant's use of his unit was considerably disrupted during a period of renovation to the premises, resulting in a substantial decrease in housing services. In addition, the tenant was locked out of his unit by the landlord, resulting in a claim of wrongful eviction. The landlord's argument of exemption from the Ordinance was not found to be persuasive by the hearing officer, who, along with staff, recommended that a strongly-worded letter be sent to the landlord, advising him that many of his actions were in violation of the Rent Ordinance. The tenant in this case is represented by counsel.

MSC: To accept the hearing officer's and staff's recommendations in this case. (Coffino/Gruber: 5-0)

B. 1355-A McAllister St.

O002-60E

The tenant in this case has been subjected to a series of harassing and retaliatory actions on the part of the landlord's agents, including unilateral changes in the terms of the tenancy, illegal entry into the unit, threats of physical violence and racial slurs, refusal to accept rent and illegal lockouts. Several eviction notices were tendered without just cause; and the landlord's agents are currently proceeding with an unlawful detainer against the tenant, who appears to be unrepresented by counsel. The hearing officer and Eviction Unit Supervisor recommended that a strongly-worded letter be sent, cautioning that if the landlords proceed with the unlawful detainer action, this case may be referred to the District Attorney for criminal prosecution.

MSC: To refer this case to the District Attorney for possible criminal prosecution. (Gruber/Steane: 5-0)

IX. Old Business

Ordinance and Rules Changes

The Commissioners briefly discussed a motion made by Commissioner B. Becker and seconded by Commissioner Marshall at the May 24th meeting, regarding approaching the Board of Supervisors for an Ordinance change which would allow tenant hardship petitions as a defense to certain landlord petitions. Seeing that there was no consensus on the Board regarding this issue at this time, Commissioner B. Becker withdrew her motion.

X. Remarks from the Public

Robert Pender congratulated the Commissioners on their endurance in having held Board meetings on five consecutive Tuesdays.

XI. Calendar Items

June 7, 1994 - ELECTION DAY; NO MEETING

June 14, 1994

6 appeal considerations

Old Business:

A. 99 Jersey St. O001-45A (cont. from 5/17/94)

B. Ordinance and Rules Changes

New Business: Hearing Protocols

June 21, 1994 - NO MEETING

June 28, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 8:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
June 14, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

- A. 88 - 6th St. O001-69A

Landlord appeal of a decision granting the decreased services claims of twenty tenants.

- B. 1021 Greenwich St. #5 O001-70A

Landlord appeal of a decision regarding the application of Rules and Regulations Section 6.14.

- C. 312 Mason St. O001-71A

Landlord appeal of a decision granting rent reductions due to decreased housing services to 5 tenants.

- D. 380 Capp St. O001-72A

Landlord appeal of a decision granting a rent reduction due to the loss of exclusive garage use and determining rent overpayments.

- E. 650 Ellis St. O001-73A

Landlord appeal of a decision regarding decreased housing services.

- F. 2245 Beach St. #6 O001-74A

Landlord appeal of a decision denying a petition seeking a determination of vacancy decontrol pursuant to Rules Section 6.14.

- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
 - 1355 McAllister St. O002-60E (considered 5/31/94)
- IX. Old Business
 - A. 99 Jersey St. O001-45A (cont. from 5/17/94)
 - B. Ordinance & Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- X. New Business
 - Hearing Protocols
- XI. Calendar Items
- XII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, June 14, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; Lightner; Marshall; Nash.
Commissioners not Present:	Schlichtmann; Steane.
Staff Present:	Wolf.

Commissioner How appeared on the record at 5:40 p.m. President Coffino went off the record at 7:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 31, 1994.
(B. Becker/Gruber: 4-0; Marshall abstaining)

IV. Consideration of Appeals

A. 88 - 6th St.

O001-69A

Thirteen tenant petitions alleging decreased housing services in a single room occupancy hotel were granted, in part, by the hearing officer. On appeal, the landlord alleges that: the building is exempt because the tenants are participants in a "Modified Payments Program" through the Department of Social Services wherein initial rents are negotiated by the Tenderloin Housing Clinic and set at a below-market rate; certain tenants were granted rent reductions for periods of time when they no longer resided in the building; some of the tenants who had outstanding judgments against them for unpaid rent were not held liable for offsets; some of the conditions were caused by tenant negligence and/or vandalism; and some of the conditions for which on-going rent reductions were granted had been abated.

MSC: To deny the appeal without prejudice to the right to offset amounts owed, if any, by either party.
(B. Becker/Marshall: 5-0)

B. 1021 Greenwich St. #5

O001-70A

The landlord filed a petition seeking a determination that the subject unit was no longer under the jurisdiction of the Ordinance because it was not the primary residence of the tenant. The hearing officer denied the petition, finding that the question of where the tenant resided was irrelevant at this time, because there are co-tenants residing in the unit with the landlord's knowledge who had never been served with notice in accordance with the provisions of Rules Section 6.14. The landlord appeals, asserting that he complied with Section 6.14 by issuing a termination notice to the original tenant upon learning that he no longer resided in the unit; and that the landlord's failure to strictly comply with the requirements of 6.14 should not be allowed to be used as a sword by the tenants to allow them to continue to pass the unit from one tenant to another.

MSC: To accept the appeal and schedule a Board hearing.
(Lightner/Gruber: 3-2; B. Becker, Marshall dissenting)

C. 312 Mason St.

O001-71A

Four tenants' petitions alleging decreased housing services were granted, and the landlord was found liable to the tenants in the amount of \$30.00 per month due to reduced security since a Youth Hostel became a tenant in the building. One tenant also received a \$15.00 rent reduction due to worn, torn carpeting in his unit. The landlord appeals, asserting that, because the method of providing security services has changed, security has in fact been increased on the premises; that the hearing officer's decision places too onerous a burden on the landlord; and that the tenants were not required to substantiate their allegations with any objective measure of proof.

MSC: To deny the appeal. (Marshall/B. Becker: 3-2; Gruber, Lightner dissenting)

D. 380 Capp St.

O001-72A

The tenants' petition alleging decreased housing services was granted by the hearing officer, and the landlord was found liable to the tenants in the amount of \$1,500.00 due to the loss of unrestricted use of the garage; and \$400.00 due to rent overpayments attributable to the presence of an additional occupant in the unit. On appeal, the landlord alleges that the hearing officer erred by construing constructive notice to the landlord of the loss of service, when actual notice was not given until some time later; there was no severe limitation on the tenants' use of the garage, since co-occupants of the flat had a key and would open the garage door upon request; and the tenants' use of the garage constituted a nuisance, for which the landlord should not be held liable.

MSC: To deny the appeal. (Marshall/B. Becker: 3-2; Gruber, Lightner dissenting)

E. 650 Ellis St.

O001-73A

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,967.50 due to serious habitability defects on the premises. The landlord appeals, maintaining that the tenant never contacted building management regarding problems in his unit; that the tenant has moved out of the building without giving 30-day notice and having failed to pay two months' rent; that many of the tenant's complaints are self-inflicted problems; that the tenant failed to provide access in order that repairs could be effectuated; and that the tenant's roommate had informed the landlord that the tenant would not be attending the hearing, which is why the landlord failed to appear.

After discussion, it was the consensus of the Board to continue this matter to the next meeting in order to obtain Declarations from both parties concerning the circumstances surrounding the landlord's failure to appear at the hearing.

F. 2245 Beach St. #6

O001-74A

This case arose pursuant to a landlord petition seeking a determination that the subject unit had become "decontrolled" under the provisions of Rules and Regulations Section 6.14. The hearing officer denied the landlord's petition, finding that the landlord had failed to comply with the requirements of Rules Section 6.14. On appeal, the landlord argues that Section 6.14 does not apply to the facts of this case, which does not involve a revolving roommate situation, but, rather, a subtenancy. As questions surrounding subtenants are governed by State law, the landlord argues that termination of the original tenancy should also have terminated the subtenancy, and that the landlord was therefore entitled to a rent increase in excess of limitations.

MSC: To deny the appeal. (Marshall/B. Becker: 4-1; Gruber dissenting)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from Attorney Nancy Lenvin regarding a proposed Ordinance change which would allow tenant hardship petitions as a defense to certain landlord petitions.

B. A Memorandum from Attorney Alan Berman, involved in the case at 99 Jersey Street (O001-45A), elucidating the general principles of equity and laches.

C. A letter from tenant E. Singh, objecting to the passthrough provisions available to landlords under the Ordinance.

VI. Director's Report

In the absence of Executive Director Grubb, Deputy Director Wolf informed the Commissioners of available dates for use of the Mayor's Box to attend a Giants game at Candlestick Park. The consensus choice, partly due to it also being Commissioner L. Becker's birthday, was the night game against the San Diego Padres on September 12th.

VII. Consideration of Allegations of Wrongful Evictions

1355 McAllister St.

O002-60E (considered 5/31/94)

At the meeting on May 31st, the Commissioners voted to refer this case to the District Attorney for possible criminal prosecution. Upon further investigation, Eviction Unit staff were informed that the landlord has agreed to drop the Unlawful Detainer action and provide the tenant with a key to the premises. Additionally, the tenant is currently represented by counsel. In light of the new information, it was the consensus of the Commissioners not to pursue the referral to the District Attorney at this time, but to accept the staff recommendation and send a strongly-worded letter, as well as to continue to monitor this case.

VIII. Old Business

The Deputy Director reported on the continuing settlement negotiations regarding the case at 99 Jersey St. (O001-45A), heard on April 19, 1994. The matter has been further continued to the July 5, 1994 Board meeting.

IX. Remarks from the Public

Robert Pender invited the Commissioners to attend the June 15th meeting of the Tenants' Network.

X. New Business

Commissioner Gruber requested that staff provide the Commissioners with data regarding the variation between the amounts requested by landlords for capital improvement certification, the values deemed to be reasonable by the estimator, and the actual passthrough amounts approved by hearing officers; and information regarding current policies regarding what constitutes repair as opposed to capital improvement work, especially with regard to expensive items such as elevators and boilers. Staff will provide this information prior to the July 19th Board hearing for the case at 1750 Vallejo St. (O001-65A & O001-85R).

The matter of Board hearing protocols was continued to the July 19th meeting.

XI. Calendar Items

June 21, 1994 - NO MEETING

June 28, 1994 - NO MEETING

July 5, 1994

9 appeal considerations (1 cont. from 5/17/94; 1 cont. from 6/14/94)

Old Business:

A. 99 Jersey St. O001-45A (cont. from 6/14/94)

B. Ordinance & Rules Changes

XII. Adjournment

President Coffino adjourned the meeting at 8:00 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
July 5, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

- A. 665 Pine St. O001-58 & -59A; O001-48R thru
-76R (cont. from 5/17/94)

Landlord and tenant appeals of a decision certifying capital improvement costs and increases due to increased operating expenses, but denying increases based on comparables.

- B. 650 Ellis St. O001-73A (cont. from 6/14/94)

Landlord appeal of a decision regarding decreased housing services.

- C. 645 Stockton St. O001-75A; O001-99R thru
O002-14R

Landlord and tenant appeals of a decision granting rent reductions due to decreased housing services.

- D. 414 - 26th Ave. #6 O001-76A

Landlord appeal of a decision granting rent reductions due to decreased housing services but denying an allegation of unlawful rent increases.

- E. 726 Fillmore St. #7 O001-77A

Landlord appeal of a decision granting rent reductions due to decreased housing services.

F. 221 Noe St. #5 O002-15R

Tenant appeal of a decision certifying capital improvement costs.

G. 1408 California St. #306 O002-16R

Tenant appeal of a stipulated agreement regarding an unlawful rent increase withdrawn by the landlord prior to the hearing.

H. 21 Scotland St. O001-78A

Landlord appeal of a decision granting rent reductions due to decreased housing services and determining rent overpayments.

I. 1538 Filbert St. #4 O001-79A

Landlord appeal of a decision granting rent reductions due to decreased housing services, claiming that the decision is in error as to who owns the property.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

A. 99 Jersey St. O001-45A (cont. from 6/14/94)

B. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Calendar Items

XII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 5, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present:	L. Becker; How; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	B. Becker; Coffino; Gruber.
Staff Present:	Grubb; Wolf.

Commissioner How went off the record at 6:30 p.m.; Commissioner Marshall left the meeting at 7:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 14, 1994 with a correction to reflect that it was Vice-President L. Becker who adjourned the meeting, and not President Coffino.
(Lightner/Marshall: 5-0)

IV. Remarks from the Public

Ernestine Cade-Hill, Citizens' Complaint Officer and Shop Steward for certain Rent Board employees, requested that the Commissioners schedule an Executive Session to discuss personnel matters. She was acting in her capacity as Shop Steward.

V. Consideration of Appeals

A. 665 Pine St.	O001-58 & -59A; O001-48R thru -76R (cont. from 5/17/94)
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This case involves 2 landlord petitions affecting 32 units, one seeking certification of capital improvement costs and increases based on operating expenses, and one seeking increases based on comparables. Certain capital improvement costs were certified and operating expense increases were granted, but the comparables petition was denied. The landlord appealed, arguing that the subject tenancies include parking, but are at the same or less

rent than similar tenancies in the building that do not include parking; and that work done to the elevator and boiler constitutes capital improvements and not "repair". Twenty-seven tenants also appealed, asserting that: the law in effect at the time of the hearing should have been applied, and capital improvements completed more than 5 years prior to the filing of the landlord's petition should not have been certified; the current landlord should not be entitled to a passthrough for capital improvement work performed by the prior owner; there is no authority in the Ordinance for the allowance of imputed interest; and any interest granted should be at a rate of less than 10%.

At the time this case was originally considered, the Commissioners denied the landlord's appeal regarding the issue of rent increases based on comparable rents, but accepted the landlord's appeal for Board hearing on the issue of whether items deemed "repair" by the hearing officer should properly be considered capital improvements. As to the tenants' appeals: consideration of the issue of whether the 5-year Statute of Limitations on capital improvement passthroughs should be applied in this case was continued until advice could be obtained from the City Attorney's Office; the question of how much, if any, imputed interest on capital improvement costs should be granted to the landlord was accepted for Board hearing, with advice regarding this issue to be obtained from the City Attorney's office; the issue of a possible "double recovery" to the landlord due to imputed interest on capital improvement costs and an operating expense increase based primarily on an increase in debt service was accepted for Board hearing; and the issue of a "repayment plan" for retroactive sums owed by the tenants was accepted for Board hearing, if necessary. The appeals were denied as to all other issues. After discussion, the following additional motion was passed:

MSC: To deny the tenants' appeal regarding the issue of the application of the 5-year Statute of Limitations on capital improvement passthroughs. (Schlichtmann/Lightner: 5-0)

B. 650 Ellis St.

O001-73A (cont. from 6/14/94)

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,967.50 due to serious habitability defects on the premises. The landlord appealed, maintaining that the tenant never contacted building management regarding problems in his unit; that the tenant moved out of the building without giving 30-day notice and having failed to pay two months' rent; that many of the tenant's complaints are self-inflicted problems; that the tenant failed to provide access in order that repairs could be effectuated; and that the tenant's roommate had informed the landlord that the tenant would not be attending the hearing, which is why the landlord failed to appear.

The Commissioners continued this matter from the June 14th meeting in order to obtain Declarations from both parties concerning the circumstances surrounding the landlord's failure to appear at the hearing. In his statement, the tenant asserts that his lease specifically prohibited an additional occupant in the

unit; and that, in fact, he had informed the property manager that he would see him at the hearing. The landlord's statement reiterates the contentions raised in his appeal.

MSF: To deny the appeal. (Marshall/L. Becker: 2-3; Lightner, Nash, Schlichtmann dissenting)

MSC: To accept the appeal and remand the case for a new hearing. (Schlichtmann/Lightner: 3-2; L. Becker, Marshall dissenting)

C. 645 Stockton St.

O001-75A; O001-99R thru
O002-14R

One tenant filed her appeal thirteen days late due to having been on vacation when the decision was issued.

MSC: To find good cause for the late filing of the appeal. (Marshall/Lightner: 5-0)

Twenty-five tenants filed petitions alleging decreased housing services which were granted, in part, by the hearing officer. The landlord was found liable to each tenant in the amount of \$492.00 for rent reductions due to the closure of garbage chutes and problems with security in the building. The landlord appeals, asserting that several tenants did not live in the building during the time the garbage chutes were closed and that the tenants had contributed to the security problems. The hearing officer has issued a Technical Correction to the Decision, adjusting rent reductions in accordance with the tenants' correct move-in dates. Fifteen tenants also appeal the decision, alleging that falling masonry constitutes a danger for which a commensurate rent reduction should be granted; and that insufficient housekeeping and maintenance services have caused a deterioration in the general appearance of the building, which also constitutes a substantial decrease in housing services.

MSC: To deny the landlord's and the tenants' appeals. (Schlichtmann/Marshall: 5-0)

D. 414 - 26th Ave. #6

O001-76A

The tenant filed a petition alleging decreased housing services due to severe roof leaks that resulted in damage to her personal property, rendered portions of the unit unusable, and caused mold and mildew throughout the unit. On appeal, the landlord alleges that rent reductions were granted for periods after the Notices of Violation had been remedied; that the tenant was partly responsible for the delay in painting the unit; and that the tenant had contributed to the mildew problem over a long period of time, prior to the roof leak.

MSC: To accept the appeal and remand the case on the issue of the termination dates for the rent reductions, if determined to be necessary by staff. (Schlichtmann/Nash: 5-0)

E. 726 Fillmore St. #7

O001-77A

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$900.00 due to a roof leak and accompanying carpet and ceiling/wall deterioration and deteriorated back stairs. The landlord failed to appear at the hearing, although the tenant maintained that he had called the landlord to remind him of the date and time. On appeal, the landlord claims not to have received notice of the hearing; that the matter had already been decided in a Municipal Court unlawful detainer action and a Small Claims Court case; and that the tenant has lied to the Rent Board and is sabotaging the property.

MSC: To recuse Commissioner Steane from consideration of this appeal. (Schlichtmann/Marshall: 5-0)

MSC: To deny the appeal without prejudice to the right to offset amounts owed, if any, by either party. (Lightner/Marshall: 5-0)

F. 221 Noe St. #5

O002-15R

The landlords' petition for certification of capital improvement costs for nine units was granted, in part, by the hearing officer. The tenants in one unit appeal the decision, asserting that the hearing was not scheduled in a timely manner, which worked to the benefit of the landlords; that the installation of a new toilet and trash can should be considered repairs, and not capital improvements; that the linoleum was not installed competently; and that the fire sprinklers installed in the basement do not benefit the tenants.

MSC: To deny the appeal. (Lightner/Schlichtmann: 5-0)

G. 1408 California St. #306

O002-16R

The tenant filed a petition alleging an unlawful rent increase, due to the landlord's having requested an additional \$150.00 per month due to the presence of a "guest" in the tenant's unit. As the notice of increase had been rescinded several months prior to the scheduled hearing in this matter, the hearing officer declined to hold a hearing, as there was no dispute ripe for adjudication. As a courtesy, the hearing officer agreed to assist the parties in effectuating a Stipulated Agreement, memorializing the basic terms of the tenancy. The tenant appeals, maintaining that she had a right to a "hearing on the merits" and to have the hearing recorded on tape.

MSC: To deny the appeal. (Lightner/Schlichtmann: 5-0)

H. 21 Scotland St.

O001-78A

The tenants' petition alleging decreased housing services due to the presence of serious roof leaks in the unit was granted by the hearing officer. The

landlords were found liable to the tenants in the amount of \$364.20 for the roof leaks and resulting inconveniences and at least \$264.00 due to rent overpayments resulting from a wrongful rent increase. The landlords appeal, asserting that, since they provided reimbursement for some of the tenants' damaged personal items and waived one month's late charge, there should be no additional compensation in the form of rent reductions.

MSC: To deny the appeal. (Schlichtmann/Marshall: 4-1; Nash dissenting)

I. 1538 Filbert St. #4

O001-79A

The tenant filed a petition alleging the landlord's failure to make requested repairs and a substantial decrease in housing services. The failure to repair claim was denied, as the petition was not filed within 60 days of receipt of notice of rent increase. The tenant prevailed on her claim of decreased housing services and the hearing officer found the landlord liable for rent reductions in the amount of \$1,890.00 due to various defects in the unit. The property is currently under receivership, and one of the entities cited as a landlord in the caption to the decision appeals, asserting that they are not the owners of the subject property.

MSC: To accept the appeal and remand the case to the same hearing officer to determine ownership of the property. A hearing will be held only if necessary. (Schlichtmann/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A lawsuit filed by attorneys Randall Shaw of the Tenderloin Housing Clinic and Robert De Vries asking for declaratory and injunctive relief on the grounds that the amendment passed by the Board on May 24, 1994, allowing single item operating and maintenance expense petitions for purposes of passing through to tenants property tax increases related to the passage of bond measures, exceeds the Board's authority.

B. The Board's Dismissal of the tenant's appeal in case no. O001-26R, which was approved and signed by Vice-President L. Becker.

C. A letter from a tenant involved in the case at 88 - 6th St. (O001-69A), considered at the previous Board meeting.

D. The applicable "disclosure category" for the Commissioners' Statements of Economic Interests.

VII. Director's Report

The Executive Director reported as follows:

A. The budget has now gone before the Board of Supervisors twice, without modification.

B. The "Channing" amendments to the Ordinance, concerning relocation payments to tenants in the event of an "Ellis" removal of housing units, is being forwarded to the Board of Supervisors.

C. A survey form to measure public satisfaction with the Rent Board's services is being developed by the counselors and hearing officers, and should be in use by August.

VIII. Old Business

99 Jersey St.

O001-45A (cont. from 6/14/94)

The Deputy Director informed the Commissioners that, regrettably, a settlement has not been reached between the parties. Therefore, this matter will be decided at the Board meeting on July 19th; briefs will be due by noon on July 13th. After discussion, it was decided that this case will not be consolidated with an upcoming appeal concerning the same property.

IV. Remarks from the Public (cont.)

Andy Braden inquired as to whether responses to the public surveys could be submitted anonymously, and was assured that they could. Robert Pender of the Tenants' Network advised the Commissioners as to the status of the Costa legislation, currently before the State Senate Judiciary Committee.

IX. New Business

The Commissioners discussed the request from Shop Steward Ernestine Cade-Hill for an Executive Session concerning personnel matters. It was decided that Ms. Cade-Hill would be asked to explain her concerns in writing. The Board will consider Ms. Cade-Hill's submission at the July 19th meeting, in Executive Session if the Commissioners so desire. At that meeting, the Board members will decide whether or not to grant Ms. Cade-Hill's request.

X. Calendar Items

July 19, 1994

6 appeal considerations

6:00 Appeal Hearing:

1750 Vallejo St. O001-65A & O001-85R thru -97R (acpt. 5/3194)

Executive Session: Personnel Matters

Old Business:

- A. 99 Jersey St. O001-45A (cont. from 7/5/94)
- B. Hearing Protocols
- C. Ordinance & Rules Changes

July 26, 1994 - NO MEETING

XI. Adjournment

Vice-President L. Becker adjourned the meeting at 8:00 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
July 19, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

- A. 1422 Powell St. #4 O002-18R

Tenant appeal of a decision denying a claim of decreased housing services but determining rent overpayments.

- B. 106 Dellbrook Ave. O001-80A

Landlord appeal of a decision determining rent overpayments.

- C. 433 Waller St. O001-81A

Landlord appeal of a remand decision granting a claim of decreased housing services and determining rent overpayments.

- D. 935 Kearny St. O002-19R & -20R

Tenant appeals of a remand decision denying a claim of decreased housing services.

- E. 150 Graystone Terrace #2 & #3 O002-22R & -23R

Tenant appeals of a remand decision granting certain capital improvement costs.

- F. 221 Noe St. #8 O002-24R

Tenant appeal of a decision certifying capital improvement costs on the basis of financial hardship.

- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
- IX. Old Business
 - A. 99 Jersey St. O001-45A (cont. from 7/5/94)
 - B. Hearing Protocols
 - C. Ordinance & Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- X. New Business
- XI. Appeal Hearing
- 6:00 1750 Vallejo St. O001-65A & O001-85R thru -97R
(acpt. 5/31/94)
- XII. Executive Session
 - Personnel Matters - Govt. Code Section 54957
- XIII. Calendar Items
- XIV. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, July 19, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:35 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber;; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	B. Becker; How.
Staff Present:	Grubb; Wolf.

Commissioner Schlichtmann appeared on the record at 5:50 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 5, 1994 with the following corrections: regarding the case at 650 Ellis Street (O001-73A), to reflect the fact that Commissioner Marshall voted with the majority in accepting and appeal and remanding the case for a new hearing; and to reflect the fact that Ernestine Cade-Hill is a Chief Shop Steward for Local 790.
(Gruber/Marshall: 4-0; Coffino abstaining)

IV. Remarks from the Public

Robert Pender invited the Commissioners to attend tomorrow's night's meeting of the Tenants' Action Network and solicited their signatures for a petition he is circulating to amend the Rent Ordinance.

V. Consideration of Appeals

A. 1422 Powell St. #4

O002-18R

The tenant's petition alleging decreased housing services due to a lack of heat was denied; however, the landlord was found liable to the tenant in the amount of \$559.20 due to a rent increase imposed prior to one year of occupancy. On appeal, the tenant asserts that the hearing officer erred in finding that the landlord repaired the boiler within a reasonable amount of time.

MSC: To accept the appeal and remand the case on the record to the same hearing officer on the issue of the date that heat was restored to the unit; a remand hearing will be held only if necessary. (Lightner/Marshall: 5-0)

B. 106 Dellbrook Ave.

O001-80A

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$15,755.47. On appeal, the landlord asserts the equitable defense of laches; special circumstances consisting of a friendship between her husband and the tenant which resulted in the original rent having been set below market to assist the tenant through a time of financial difficulties and substance abuse; that the landlord had not imposed unlawful rent increases but, rather, the tenant had voluntarily increased his own rent; and a possible financial hardship.

It was the consensus of the Commissioners to continue this case in order to give the landlord a chance to fill out a Hardship Application and to allow the tenant's attorney to respond to the issues raised in the landlord attorney's brief.

C. 433 Waller St.

O001-81A

The tenant's petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenant in the amount of \$175.00 due to the condition of the plumbing and refrigerator/freezer. Rent overpayments in the amount of \$3,116.49 were also determined. The landlord appealed the decision, and the case was remanded to the same hearing officer on the issues of the rent history and the duration of the rent reductions. The Decision on Remand holds the landlord liable to the tenant for \$122.50 for decreased housing services and \$5,275.16 for rent overpayments. The landlord again appeals, asserting that: the termination date for the rent reduction due to the plumbing problem is incorrect, as the problem had already ceased; the tenant was aware that rent increases had incorrectly been calculated on a base rent amount that included a capital improvement passthrough and, on two prior occasions, chose not to pursue the issue; the legal principal of res judicata prevents the Board from reopening the issue of the base rent, as the amount was held to be correct in a 1986 decision certifying capital improvement costs; and the tenant is paying less rent than he would be obligated to pay had the landlord availed himself of all allowable rent increases.

MSC: To deny the appeal. (Marshall/L. Becker: 3-2; Gruber, Lightner dissenting)

D. 935 Kearny St.

O002-19R & -20R

The tenants filed a petition alleging a substantial decrease in housing services, the landlord's failure to make requested repairs, and unlawful increases in rent. The landlord was found liable to the tenants in the amount of \$60.00 due to the lack of screens on common area windows; all other claims were denied. The

tenants appealed, and the case was remanded to the same hearing officer "on the issue of the number of bathrooms only, and whether this condition constitutes a substantial decrease in services." It was left to the hearing officer's discretion as to whether a fourth hearing in this matter was warranted; the hearing officer issued a remand decision on the record, finding that the tenants had failed to prove that two out of six toilets on their floor were locked for a seven-month period. The tenants separately appeal the remand decision, asserting that the hearing officer's decision is not based upon any factual showing; that the hearing officer failed to comply with the order on appeal; that a new hearing should have been held; and that the hearing officer is biased in favor of the landlord.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

E. 150 Graystone Terr. #2 & #3 O002-22R & -23R

The landlord's petition for certification of capital improvement costs was granted as to the costs of 34 new windows at the subject property. The property is built into the side of a hill and consists of three terraces. The tenant appellants reside on the first floor, which did not receive new windows. However, the costs were allowed to be passed through to them because the hearing officer found that the tenants benefited from weatherproofing provided to the entire building by the window replacement. The tenants appealed the decision and the Board remanded the case on the issue of allocation of the costs of the windows. On remand, the hearing officer again certified the costs of the windows to these two tenants, finding that the replacement of weather-deteriorated windows benefits the entire structure of the building and prevents damage due to leaks. The tenants again appeal, asserting that the decision on remand is based on incorrect information regarding the building structure.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

F. 221 Noe St. #8 O002-24R

This appeal was withdrawn prior to the meeting.

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. letter from Alfred Goodwin regarding Hearing Officers' application of the decrease in services remedy.

B. The appeal decision regarding the case at 1369 Hyde Street #52 (O001-82R), which was approved by the Board and signed by President Coffino.

VII. Director's Report

Executive Director Grubb reported that the "Channing" amendments to the Ordinance, concerning relocation payments to tenants in the event of an "Ellis" removal of housing units, will be considered before the appropriate committee of the Board of Supervisors on Thursday, July 21st at 10:00 a.m.

VIII. Old Business

A. 99 Jersey St.

O001-45A (cont. from 7/5/94)

This matter was heard before the Board on April 19, 1994. The case originated with three tenant petitions alleging decreased housing services due to the prior landlords' conversion from steam to electric heat in 1982. The Decision of Hearing Officer found the landlord liable to each tenant in the amount of \$9,340.20. The landlords' appeal was accepted for Board hearing on the issue of laches. No decision was reached at the time of the Board hearing. Rather, the matter was continued in order to receive advice from the City Attorney's office regarding application of the laches defense. The case was continued several times thereafter in order to further settlement discussions between the landlords and tenants. As no settlement was reached, the Commissioners, after discussion, passed the following motion:

MSC: To find that the equitable defense of laches applies in this case and to order reimbursement to the tenants from the time the new owners purchased the property only.
(Marshall/Schlichtmann: 3-2; Gruber, Lightner dissenting)

B. Hearing Protocols

The Commissioners briefly discussed the conduct of Board hearings and discrepancies between the language contained in the Notice of Hearing and in the Rules and Regulations. The Notice of Appeal Hearing will be revised to conform to the Rules and Regulations and to reflect that narrative testimony will be allowed subject to the discretion of the Commissioners.

C. Ordinance and Rules Changes

President Coffino distributed a draft Rules change concerning the issue of imputed interest on capital improvement costs.

IV. Remarks from the Public (cont.)

Six members of the public addressed the Commissioners regarding personnel matters at the Rent Board Board. Ernestine-Cade-Hill, Chief Shop Steward for Local 790, stated her belief that there are racial problems at the office, alleging disparate treatment of black employees. Doris Charles, Citizens Complaint Officer, alleged that the Executive and Deputy Directors of the agency have an agenda against her, and that she has purposefully been set up for failure; and that other co-workers have abused her and cheated on their time sheets.

Doris' aunt, Eleanor Harvey, and two sisters, Barbara Johnson and Jo-Rhonda Marcell, expressed their support for Ms. Charles and articulated their concern about her stress level and made several suggestions for improving the office environment. Kevin Williams, Vice-President of the New Bayview Committee, chastised the Commission for not reflecting the diversity of San Francisco; accused the Rent Board administration of denying the promotion of African-American women to supervisory positions; and alleged that an "old girls network" existed in the department. He also maintained that Executive Director Joe Grubb cannot be fair because he is a landlord, and demanded a report on the investigation of these issues.

IX. Appeal Hearing

1750 Vallejo St.

O001-65A & O001-85R thru -97R
(acpt. 5/31/94)

This matter was postponed upon the request of tenants' counsel prior to the meeting.

X. Executive Session

The Commissioners went into Executive Session to discuss personnel matters pursuant to Government Code Section 54957 from 8:20 p.m. until 10:00 p.m.

XI. Calendar Items

July 26, 1994 - NO MEETING

August 2, 1994 -
8 appeal considerations

6:00 Appeal Hearing: 665 Pine St. O001-58 & 59A; O001-48R thru
-76R (acpt. 7/5/94)

Eviction Report

Old Business: Ordinance & Rules Changes

Executive Session: Personnel

XII. Adjournment

President Coffino adjourned the meeting at 10:05 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
August 2, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 968 Page St. #3 P001-02A

Landlord appeal of a decision granting a decrease in services claim.

B. 396 - 23rd Ave. P001-03A

Landlord appeal of a decision granting a claim of decreased housing services.

C. 2153 Sacramento St. #7 P001-01A

Landlord appeal of a decision granting rent reductions due to the loss of on-site parking.

D. 3336 Taraval St. P001-01R

Tenant appeal of a dismissal of their decrease in services petition due to their failure to appear at the hearing.

E. 1200 Fulton St. #306 & #410 P001-02R & -03R

Two tenant hardship appeals of a decision certifying capital improvement costs.

F. 534 Shotwell St. #3 P001-04R

Tenant appeal of a dismissal of a petition alleging decreased housing services.

G. 3631 Mission St. P001-04A

Landlord appeal of a decision granting claims of failure to repair and decreased housing services but denying a claim of wrongful rent increases.

H. 251 San Jose Ave. P001-05A

Landlord appeal of a decision determining rent overpayments.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

340 So. Van Ness #1	O001-99E
2055 California St., #301	O001-61E
337 Richland Ave.	O003-11E
2313 21st Ave.	O003-19E
3438 19th St.	O003-24E

IX. Old Business

Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 665 Pine St. O001-58 & -59A; O001-48R thru -76R
(acpt. 7/5/94)

XII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 2, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:42 PM.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber; How; Lightner; Nash; Steane.
Commissioners not Present:	B. Becker; Marshall; Schlichtmann.
Staff Present:	Grubb; Gartzman.

III. Approval of the Minutes

MSC: To approve the Minutes of July 19, 1994 with the following amendments: change "Tenants' Action Network" to "Tenants' Network" under Item IV (Remarks from the Public); add to Item VI (Communications) a letter dated July 12, 1994 from Ernestine Cade-Hill to the Rent Board Commissioners. (Steane/L. Becker: 5-0)

IV. Remarks from the Public

Robert Pender of the Tenants' Network informed the Commissioners that 13,724 signatures were submitted to the Registrar of Voters to qualify an initiative for the November 1994 ballot. If passed, the initiative would amend the Ordinance by eliminating the exemption of owner-occupied buildings of four units or less.

Ernestine Cade-Hill, Chief Shop Steward for Local 790, addressed the Commissioners concerning mediation services to be offered by the Rent Board and the expedited hearing process. She also gave the Commissioners a Memorandum dated August 2, 1994 with a list of the concerns that have been raised by some of the staff and requested that the Commissioners respond to the Memorandum.

Doris Charles, Citizens Complaint Officer, asked to be informed of the protocol and procedure after the Executive Session.

V. Consideration of Appeals

A. 968 Page St. #3

P001-02A

The tenants' petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenants in the amount of \$1,350.00 for a leaking and water-damaged passageway ceiling, lack of pest control, a rotted living room window, a defective refrigerator and a defective heater. A continuing rent reduction of \$15.00 was ordered until the ant problem is eliminated. The base rent was corrected and the landlord was found liable to the tenants for rent overpayments totaling \$34.72 due to excessive rent increases in 1993 and 1994. In lieu of a personal appearance at the hearing, the landlord elected to submit a written statement of his position. On appeal, the landlord seeks to offer new evidence to rebut the tenants' claims, which evidence could have been offered at the hearing had the landlord appeared. Technical corrections are also sought for several items in the decision, including the mischaracterization of a vanity sink as a leaky bath sink, and the miscalculation of rent overpayments.

MSC: To deny the appeal but to remand the case to the hearing officer for technical corrections concerning the vanity sink and the calculation of rent overpayments. (Steane/L. Becker: 5-0)

B. 396 - 23rd Ave.

P001-05R and P001-03A

The tenant's petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenant in the amount of \$5,070.00 for lack of painting for 69 months, lack of heat for one week, lack of a toilet tank lid, lack of an entrance light, lack of a hallway light, lack of a hot water shower knob, deteriorated kitchen floor, deteriorated porch linoleum and failure to replace window coverings damaged by the landlord's painter and thrown away by the tenant. On appeal, the landlord claims that the hearing officer was biased in favor of the tenant and that no rent reductions are warranted because he had no knowledge of the need for painting until March 1992 when the tenant agreed to paint, that the heater was repaired and the toilet tank lid was replaced within a reasonable time, that the tenant is responsible for replacing burned out light bulbs, that the tenant always had use of hot water in the shower and that the window coverings could have been cleaned instead of thrown away. The tenant also filed an appeal attempting to introduce new evidence concerning the lack of painting since 1981 and the lack of heat between 1981 and 1988.

MSC: To deny the tenant's appeal; to accept the landlord's appeal only on the issues concerning lack of heat and lack of a toilet tank lid and to remand the case to the same hearing officer on the record to determine whether the values assigned to these decreased housing services (50% and 5%, respectively) are reasonable. (Coffino/Lightner: 4-1; Gruber dissenting)

C. 2153 Sacramento St. #7

P001-01A

The tenant's petition alleging decreased housing services based on the loss of on-site tandem parking was granted by the hearing officer. Parking was promised prior to commencement of the tenancy, but not actually provided until almost two years after the tenancy began, at the rate of \$75.00 per month. After new owners purchased the building, they recovered possession of the tenant's parking space for their own use and reduced the tenant's rent by \$75.00. The hearing officer granted the tenant an additional rent reduction of \$125.00 because the cost of available replacement off-site parking in the neighborhood was around \$200.00 per month. On appeal, the landlords argue that the value of the parking space cannot exceed \$75.00 because the former landlord and this tenant agreed that the value of the parking space was \$75.00 and that is what was charged. They further contend that the value of comparable parking in the neighborhood is \$75.00, not \$200.00, and the landlords should not be required to compensate the tenant for the cost of a more expensive non-comparable replacement.

MSC: To excuse President Coffino from consideration of this appeal.
(L. Becker/Steane: 5-0)

MSC: To accept the landlords' appeal and to remand the case to the same hearing officer on the record to find that \$75.00 is the reasonable value of the parking space. (Gruber/Steane: 3-1; L. Becker dissenting)

D. 3336 Taraval St.

P001-01R

The tenants appeal the dismissal of their petition alleging decreased housing services, claiming that they failed to appear at the hearing or to file a written excuse for non-appearance because they were out of town on a family emergency.

MSW: To deny the appeal. (Lightner/Gruber)

It was the consensus of the Commissioners to continue consideration of this appeal in order to give the tenants a chance to submit a statement, under penalty of perjury, concerning the reason for their non-appearance at the hearing, with specific dates of the relevant events.

E. 1200 Fulton St. #306, #410

P001-02R and P001-03R

The landlord's petition for certification of capital improvement costs was granted in part. Two underemployed tenants appeal the passthrough of certified capital improvement costs to their units on the basis of financial hardship.

It was the consensus of the Commissioners to continue consideration of these appeals in order to obtain additional information from each of the tenants about their employment situations and to find out what type of relief is actually sought by the tenants. After obtaining the information, staff was directed to contact the

landlord to determine if an agreement could be reached on either or both of these appeals.

F. 534 Shotwell St. #3

P001-04R

The tenant filed an untimely appeal of the dismissal of his petition alleging decreased housing services. Despite a written request from the Deputy Director, the tenant failed to explain in writing the reason for the late appeal. On appeal, the tenant claims that he called the Rent Board the day before the hearing to state that he would not appear at the hearing due to a conflicting work schedule.

MSW: To deny the appeal. (L. Becker/Gruber)

It was the consensus of the Commissioners to continue consideration of this appeal for two weeks in order to allow the tenant to submit a written statement, under penalty of perjury, explaining why the appeal was filed four days late and why he failed to appear at the hearing.

G. 3631 Mission St.

P001-04A

The tenants filed a petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to perform requested repairs and maintenance as required by law. The unlawful rent increase claim was denied. The tenants prevailed on their claims of decreased housing services and failure to repair and the landlord was found liable for rent reductions in the amount of \$680.00 due to an infestation of rodents and cockroaches and deteriorated rear stairs. A continuing rent reduction of \$85.00 was ordered and the proposed 1993 rent increase was deferred until these conditions are corrected, as ordered by the Bureau of Building Inspection and the Health Department. On appeal, the landlord argues that the decision is in error because he provides regular pest control and made some repairs to the rear stairs.

MSC: To deny the appeal. (Steane/L. Becker: 5-0)

H. 251 San Jose Ave.

P001-05A

The tenant filed a petition alleging decreased housing services and unlawful rent increases. At the hearing, the parties settled the decrease in services claim and stipulated to the tenant's rent history, agreeing on the year and amount of all past rent increases since 1982. The 1982 and 1983 rent increases were determined to be null and void and the base rents since 1982 were recalculated. The parties signed an agreement reflecting the corrected base rents, but incorrectly failing to reflect that the tenant was entitled to a refund of rent overpayments for the three years prior to the filing of the petition. After the hearing, this error was explained to the parties, and both agreed to let the agreement stand as to the decrease in services issue and to have a written decision issue concerning the refund of rent overpayments. The landlord was held liable to the tenant in the amount of \$3,835.36 for rent overpayments. On appeal, the landlord claims that since the 1982 rent increase was issued in January, prior to the effective date of the null and

void provision, that rent increase is lawful and the base rent and rent overpayments should be recalculated from 1983 only. There is no documentary evidence in the record regarding the month of the 1982 rent increase.

MSC: To accept the appeal and remand the case for a new hearing to determine the date of the 1982 rent increase and to recalculate the base rent and rent overpayments, if necessary.
(L. Becker/Gruber: 5-0)

XI. Appeal Hearing

665 Pine Street

O001-58A, O001-59A,
O001-48R through O001-76R

This case involves 2 landlord petitions affecting 32 units, one seeking certification of capital improvement costs and increases based on increased operating and maintenance expenses, and one seeking increases based on rents for comparable units. Certain capital improvement costs were certified and operating expense increases were approved, but the comparables petition was denied. On April 5, 1994, the Commissioners accepted the landlord's appeal for Board hearing on the issue of whether seven items deemed "repair" by the hearing officer should properly be considered capital improvements. The landlord's appeal was denied as to all other issues. Twenty-seven tenants also appealed. On April 5, 1994, the Commissioners accepted the tenants' appeals for Board hearing on the following issues: the question of how much, if any, imputed interest on capital improvement costs should be granted to the landlord; the issue of a possible "double recovery" to the landlord due to imputed interest on capital improvement costs and an operating expense increase based primarily on an increase in debt service; and, the issue of a "repayment plan" for retroactive sums owed by the tenants, if necessary. The tenants' appeals were denied as to all other issues on April 5, 1994 and July 5, 1994. The issue of a repayment plan for retroactive sums owed was determined to be moot.

The landlord appeared through an attorney and a non-attorney representative, who also offered testimony on the "double recovery" issue. The tenants appeared through an attorney. A witness for the landlord appeared to offer testimony about four items of work performed on the elevator. The hearing commenced at approximately 6:45 PM and concluded at approximately 11:00 PM. Testimony focused on the nature of the elevator work, and the issue of a possible "double recovery" to the landlord if he is granted both 10% imputed interest on capital improvement costs and the 7% operating expense increase, which is based primarily on an increase in the landlord's debt service. Legal arguments were presented on the issues by the parties' representatives. At the conclusion of the hearing and after discussion, the Commissioners passed the following motions:

MSC: To certify the costs of the elevator brake linings, governor cable, motor armature and new elevator motor as capital improvements and to recalculate the capital improvement

passthroughs based on these additional costs.
(Lightner/Gruber: 3-2; L. Becker, Coffino dissenting)

MSC: Pursuant to Rules and Regulations Section 7.14, the landlord in this case may pass on 10% of the capital improvement costs for interest on money paid, imputed or real, although the Board has discretion under Section 7.14. (Lightner/Gruber: 3-2; L. Becker, Coffino dissenting)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from Alan Berman to President Coffino regarding the notice of appeal hearing.

B. The Department's reply to a request for information from the Office of Fair Housing and Equal Opportunity concerning HUD Case No. 09-94-1040-8, Young Ideas Family Home vs. Rent Board.

VII. Director's Report

Executive Director Grubb made the following reports:

A. The Board of Supervisors has continued consideration of the "Channing" amendments to the Ordinance, concerning relocation payments to tenants in the event of an "Ellis" removal of housing units.

B. Supervisor Kennedy requested a hearing before the Economic Vitality/Social Policy Committee "to consider the 1992 reorganization of the Residential Rent Stabilization and Arbitration Board and it[s] progress to date and how the public is best served by using contract hearing officers."

C. Supervisor Kennedy made a motion "directing the Budget Analyst to conduct a management audit of the Rent Board" which was referred to the Board of Supervisors for adoption without committee reference on the August 8, 1994 calendar.

VIII. Consideration of Allegations of Wrongful Evictions

A. 340 S. Van Ness Ave. #1 O001-99E

IPresident Coffino signed a strongly worded letter to the landlord concerning her improper and unlawful conduct with respect to the tenant in this unit.

B. 2055 California St. #301 O001-61E

The landlord served the tenant with a notice to terminate tenancy based on three alleged breaches of the rental agreement: double occupancy of the unit; doing business out of the unit; and obstructing work being done to improve the building. The tenant denies these allegations, claiming that the landlord has repeatedly harassed her, invaded her privacy and discriminated against her. The hearing officer found that although there was evidence to support the tenant's allegations, there was also evidence to support the landlord's claims. However, as the landlord accepted rent payments after the notice to vacate was served and made no further attempt to terminate the tenancy before the tenant voluntarily vacated, the issue of whether or not there was a wrongful eviction was not reached. The hearing officer and Eviction Unit Supervisor recommended that a stern, cautionary letter be sent, warning the landlord to modify her future behavior in dealing with her tenants and to seek legal advice before taking any action toward her tenants that has legal consequences. Copies of the letter should be sent to both the Fair Housing Representative and the Consumer Fraud Unit representative, and future complaints to the Rent Board about this landlord should be closely monitored.

C. 337 Richland Ave.

O003-11E

The tenant and his family have lived in the unit for six years with the tenant's mother, without specifically notifying the landlord of their occupancy. The landlords refused to accept rent from the tenants in March 1994 and orally told them to move out, claiming that the tenants are not lawful tenants and that the mother, the tenant with whom they have an agreement, no longer resides in the unit. The landlords claim that they first learned of the tenants' occupancy in March 1994, although the evidence strongly suggests that they knew or should have known of their occupancy long before that date. The hearing officer found that the landlords' oral eviction notice was procedurally defective and that the tenant and his family are considered original tenants because the landlords failed to give the tenants a written notice that they were not considered tenants pursuant to Rule 6.14(d) within 60 days of learning of their presence in the unit. Therefore, there is no basis for evicting the tenants on the grounds that they are not lawful tenants. The hearing officer and Eviction Unit Supervisor recommended that a cautionary letter be sent to the landlords advising them of the tenants' lawful status.

D. 2313 - 21st Ave.

O003-19E

This long-term tenant with a low base rent received from both the landlord and her son a 2 week notice to vacate within a month of his written request to replace the refrigerator. The son's notice does not contain a just cause. The landlord's notice was given because the tenant is "causing so many problems for my son" and because the landlord was "considering" offering the unit to her grandson and because construction work "will probably begin" in three weeks. There are bad feelings between the landlord's son and the tenant because of the refrigerator issue and because the landlord's son believes that the tenant "ripped off" the landlord for 13 years based on misinformation about the maximum rent the landlord could charge. The landlord's son responded to the Report of Alleged Wrongful Eviction by claiming that it adversely affected his mother's precarious health and advising the Rent Board not to "do anything to her" during his upcoming

absence from the country. The landlord and her son did not attend the hearing, but no further eviction attempts were made. The hearing officer found that the notices to vacate are facially and substantively defective and that the attempted eviction appeared to be retaliatory and lacking in good faith and honest intent. The hearing officer and Eviction Unit Supervisor recommended that a strongly worded letter be sent to the landlord and her son advising them of their obligations and responsibilities under the Rent Ordinance. If the landlord and/or her son continue to pursue an eviction of this tenant without just cause and/or in retaliation for the tenant's exercise of legal rights, this matter should be referred to the District Attorney's office for investigation and possible criminal prosecution.

E. 3438 - 19th St.

O003-24E

The master tenant sought to evict the tenant for non-payment of rent. The tenant disputed the amount of rent that was lawfully owed. Insufficient evidence was presented to establish whether the rent demanded was excessive under the Ordinance. As the matter was pending in Municipal Court, the hearing officer and Eviction Unit Supervisor recommended that no further action be taken.

MSC: To accept the recommendations of the Hearing Officers and the Eviction Unit Supervisor in all of these cases. (Gruber/L. Becker: 5-0)

IX. Old Business

Due to the lateness of the hour, discussion of proposed Ordinance and Rules changes was continued to the next meeting.

IV. Remarks from the Public (cont.)

Robert Pender of the Tenants' Network informed the Commissioners that sufficient signatures had been timely submitted to the Registrar of Voters to put a charter amendment on the November 1994 ballot concerning creation of a Commission for the Bureau of Building Inspection.

X. New Business

Rent Board appeal hearing procedures were briefly discussed and continued for further discussion to the August 30, 1994 meeting.

XII. Executive Session

The Commissioners went into Executive Session to discuss personnel matters pursuant to Government Code Section 54957 from 11:22 PM to 11:55 PM.

XIII. Calendar Items

August 9, 1994 - NO MEETING

August 16, 1994

Old Business:

- A. 534 Shotwell St. #3, P001-04R (cont. from 8/2/94)
- B. Ordinance & Rules Changes: Issues for Discussion

August 23, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 11:59 PM.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
August 16, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Communications
- VI. Director's Report
- VII. Old Business
 - A. 534 Shotwell St. #3, P001-04R (cont. from 8/2/94)
 - B. Ordinance and Rules Changes: Issues for Discussion
- IV. Remarks from the Public (cont.)
- VIII. New Business
- IX. Calendar Items
- X. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 16, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:30 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber; How; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	B. Becker; Lightner.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of August 2, 1994 with the following correction: the second motion passed by the Board regarding the appeal hearing concerning 665 Pine Street (O001-58 & -59A; O001-48R thru -76R) should read as follows: "Pursuant to Rules and Regulations Section 7.14, the landlord is granted 10% interest on the capital improvement costs."
(How/Coffino: 5-0)

IV. Remarks from the Public

Robert Pender of the Tenants' Network informed the Commissioners that Tenants for Housing Justice has obtained enough signatures to place Proposition I on the November ballot. This initiative, if passed, would remove the exemption of owner-occupied 4-unit or less buildings from the Ordinance.

V. Communications

The Commissioners received the following communications:

A. Statistical reports showing the number of petitions filed for the fiscal year '93-'94, compared to prior years.

B. A letter from Board President Coffino to Espanola Jackson, President of the District 7 Democratic Club, concerning personnel matters.

C. An article from the August 16, 1994 *San Francisco Independent* regarding a court challenge to the Board's recently adopted Rules change allowing for the passthrough of bond-related property tax increases.

VI. Director's Report

Executive Director Grubb informed the Board that the "Channing" amendments to the Ordinance, concerning relocation payments to tenants in the event of an "Ellis" removal of housing units, would be heard before the Housing and Land Use Committee of the Board of Supervisors on Thursday, August 18th, at 10:00 a.m.

VII. Old Business

A. 534 Shotwell St. #3

P001-04R (cont. from 8/2/94)

Consideration of this appeal was further continued to the August 30, 1994 meeting.

B. Ordinance and Rules Changes

The Commissioners discussed a proposed replacement for Section 7.14 of the Rules and Regulations that was distributed by Commissioner Coffino at the July 19, 1994 meeting. The proposal would grant landlords the actual rate of interest incurred on capital improvement costs, or, in the case of imputed interest, a reasonable rate of interest to be determined by the hearing officer in light of all applicable circumstances. After discussion, the Commissioners passed the following motion:

MSC: To hold a Public Hearing on the draft replacement for Section 7.14 of the Rules and Regulations, regarding the allowance of interest on capital improvement costs.
(Coffino/Marshall: 3-2; Gruber, How dissenting)

The Commissioners also discussed draft amendments to Section 10.10 of the Rules and Regulations prepared by Commissioner L. Becker concerning the issue of constructive notice in the context of decrease in housing services claims. This issue was continued to the August 30th meeting.

VIII. New Business

The Commissioners discussed personnel matters, specifically a letter prepared by President Coffino in response to concerns articulated at the July 19th and August 2nd Board meetings by Chief Shop Steward Ernestine Cade-Hill and Citizens Complaint Officer Doris Charles.

IX. Calendar Items

August 23, 1994 - NO MEETING

August 30, 1994

10 appeal considerations (inc. 1 cont. from 7/19/94 & 1 cont. from 8/16/94)

Old Business: Ordinance & Rules Changes

Executive Session: Personnel

September 6, 1994

8 appeal considerations (inc. 2 cont. from 8/2/94)

X. Adjournment

President Coffino adjourned the meeting at 8:25 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
August 30, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals
 - A. 106 Dellbrook Ave. O001-80A (cont. from 7/19/94)
Landlord appeal of a decision determining rent overpayments.
 - B. 534 Shotwell St. #3 P001-04R (cont. from 8/16/94)
Tenant appeal of a dismissal of a petition alleging decreased housing services.
 - C. 760 Northpoint St. #2 P001-06A
Landlord appeal of a decision granting a tenant's claim of decreased housing services but denying a failure to repair claim.
 - D. 1145 Green St. P001-09A
Landlord appeal of a decision certifying some, but not all, capital improvement costs.
 - E. 54 Brighton P001-08A
Landlord appeal of a decision denying a claim of decreased housing services but determining rent overpayments.
 - F. 1271 - 26th Ave. P001-07A
Landlord appeal of a remand decision finding Rent Board jurisdiction over a foster care facility.

G. 1035 B Scott St. P001-10A

Landlord appeal of a decision granting a claim of decreased housing services.

H. 888 Carolina St. P001-11A

Landlord appeal of a decision granting a claim of decreased housing services.

I. 99 Jersey St. P001-12A & P001-06R thru -18R

Landlord and tenant appeals of a decision granting rent reductions due to inadequate heat.

J. Parkmerced P001-06R thru -10R

Five tenants appeal a decision certifying capital improvement costs on the basis of financial hardship.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

Rules and Regulations Section 12.19 (Stavrinides v. Cresalia)

XI. Executive Session

Personnel Matters - Govt. Code Section 54957

XII. Calendar Items

XIII. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, August 30, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 5:50 p.m.

II. Roll Call

Commissioners Present: L. Becker; How; Lightner; Marshall; Nash;
Schlichtmann; Steane.
Commissioners not Present: B. Becker; Coffino; Gruber.
Staff Present: Grubb; Wolf.

Commissioner Marshall went off the record at 7:40 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 16, 1994.
(Marshall/How: 5-0)

IV. Remarks from the Public

Ernestine Cade-Hill, Chief Shop Steward for Local 790, addressed the Commissioners regarding on-going personnel matters at the Rent Board. She stated her belief that she is under attack by Executive Director Joe Grubb; that the Board did not provide her with the opportunity to express her concerns in Executive Session; and that she is obtaining legal advice before responding to a request for additional information from President Coffino on behalf of the Board.

Robert Pender of the Tenants' Network informed the Commissioners that Proposition I on the November ballot, having to do with removing the exemption of owner-occupied four unit or less buildings from the Ordinance, has been endorsed by several organizations.

V. Consideration of Appeals

A. 106 Dellbrook Ave.

O001-80A (cont. from 7/19/94)

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$15,755.47. On appeal,

the landlord asserts the equitable defense of laches; special circumstances consisting of a friendship between her husband and the tenant which resulted in the original rent having been set below market to assist the tenant through a time of financial difficulties and substance abuse; that the landlord had not imposed unlawful rent increases but, rather, the tenant had voluntarily increased his own rent; and a possible financial hardship.

At the July 19th meeting, the Commissioners continued this case in order to give the landlord a chance to fill out a Hardship Application and to allow the tenant's attorney to respond to the issues raised in the landlord attorney's brief. After discussion of the requested submissions, the Board passed the following motion:

MSC: To deny the appeal. (Marshall/Schlichtmann: 4-1; Nash dissenting)

B. 534 Shotwell St. #3

P001-04R (cont. from 8/16/94)

The tenant filed an untimely appeal of the dismissal of his petition alleging decreased housing services. Despite a written request from the Deputy Director, the tenant failed to explain in writing the reason for the late appeal. On appeal, the tenant claimed that he called the Rent Board the day before the hearing to state that he would not appear at the hearing due to a conflicting work schedule. At their August 2nd meeting, the Commissioners continued this matter in order to allow the tenant to submit a written statement, under penalty of perjury, explaining why the appeal was filed four days late and why he failed to appear at the hearing. Due to a clerical error, the case was further continued from the August 16th meeting. The tenant failed to submit any response to the Board's requests for additional information.

MSC: To find no good cause for the late filing of the appeal. The Dismissal of the tenant's petition is therefore final.
(Schlichtmann/Lightner: 5-0)

C. 760 Northpoint St. #2

P001-06A

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$6,150.00 due to an unsecured patio door, compromising the security of the unit; inoperable windows, leaving the unit unventilated; loss of exclusive use of the patio; a broken front entrance lock; and inoperable door buzzer system. The tenant's failure to repair claim was denied due to their being no pending rent increase. On appeal, the landlord alleges that there was no notice given as to work needed in the unit; that they rectified the buzzer problem in a timely manner; that the services have been restored; and that the decision is unfair and exhibits bias towards the tenant.

MSC: To deny the appeal. (Marshall/Schlichtmann: 4-1; Nash dissenting)

D. 1145 Green St. #1 & #5

P001-09A

The landlord's petition for certification of capital improvement costs was granted, in part. Expenditures for new lights, exterior and common area painting, a new intercom system and security fence were not passed through to the tenants in two units because the tenancies commenced within 6 months of commencement of the work. On appeal, the landlord asserts that the tenants in unit numbers 1 and 5 moved in within months of the owner's death. As it was the administrator of the estate who commenced the work, Rules Section 7.12(b) should not apply because the work was not foreseeable at the time tenants took occupancy.

MSC: To deny the appeal. (Schlichtmann/Marshall: 5-0)

E. 54 Brighton St.

P001-08A

The portion of the tenant's petition alleging decreased housing services was denied because the hearing officer found that on-going yard maintenance was not verifiably promised at the inception of the tenancy. The allegation of unlawful rent increases was granted, in part, and the landlord was found liable to the tenant in the amount of \$4,739.82 due to an increase from \$550.00 to \$650.00 approximately two months after the inception of the tenancy. The tenant had also challenged the legality of three rent increases within the allowable amount that she had paid voluntarily, because they were not noticed in writing by the landlord. The hearing officer found that the increases were not unlawful because they had not been imposed by the landlord. On appeal, the landlord asserts that the amount of \$550.00 had never been established as the rental amount for the unit. Rather, that there was an understanding that the rent would be set as soon as the landlord could determine what market rent for the single family dwelling should be, as the house had never been rented prior to this tenancy.

MSC: To accept the landlord's appeal and schedule a hearing before the Board. (Schlichtmann/Lightner: 5-0)

F. 1271 - 26th Ave.

P001-07A

The tenants filed a petition alleging an unlawful increase in rent from \$1,300 to \$2,200 per month for the premises, which are used as a foster care facility. The original Decision of Hearing Officer found that Rent Board jurisdiction was preempted by California Health and Safety Code Section 1518, which states that licensed care facilities are not subject to local controls on rent. Upon appeal by the tenants, the case was remanded by the Rent Board Commissioners, who found that jurisdiction was not preempted by State law, and directed the hearing officer to render a decision based on the other issues raised by the parties. In her Decision on Remand, the hearing officer found jurisdiction because California Health and Safety Code Section 1566.3 prohibits considering a foster home as anything other than a "family dwelling",

and therefore it would be contrary to law to view this property as commercial, regardless of the understanding of the parties. The landlord appeals the remand decision, arguing that the legal principle of "waiver" does not apply to the facts of this case; the landlords should be entitled to a "comparables" increase due to extraordinary circumstances resulting in the initial rent having been set very low; and the amount of \$1,300 was not the initial base rent but a temporary arrangement to be followed by a long-term rent commitment as outlined in the various lease proposals promulgated by the landlord. After discussion, the Board passed the following motion:

MSC: To continue consideration of this matter for one week.
(Lightner/Schlichtmann: 4-1; L. Becker dissenting)

G. 1035 Scott St. #B

P001-10A

The tenants' petition alleging decreased housing services was granted, and the landlord was found liable to the tenant in the amount of \$2,820.00 due to various habitability defects in the unit. The landlords appeal, alleging that: the landlords responded in a timely manner to repair requests; the tenants refused to provide access to handymen sent to perform repairs; and an unauthorized subtenant listed on the caption of the decision should not be entitled to any of the sums granted.

MSC: To deny the appeal except for a technical correction to the caption of the decision. (Schlichtmann/Marshall: 5-0)

H. 888 Carolina St.

P001-11A

The tenant's petition alleging decreased housing services was granted and the landlords were found liable to the tenant in the amount of \$372.00 due to lack of heat for some of November and all of December of last year and loss of storage space in the basement. The landlords appeal, maintaining that use of the storage space was never part of the rental agreement; that the tenant had only used 5% of the total available space; and that the tenant's room-mate's home office contributed to the problem of overloaded electrical circuits.

MSC: To deny the appeal. (Schlichtmann/Marshall: 4-1; Nash dissenting)

I. 99 Jersey St.

P001-12A & P001-11R thru -16R

This case involves sixteen tenant petitions filed by tenants of fifteen units alleging a substantial decrease in housing services due to inadequate heat in the units; one petition alleging the additional decreased service of the conversion of steam heat supplied by the landlords to electric heat paid for by the tenant was denied because the current subtenant of the unit never had the benefit of the steam heat system. Four tenants filed petitions alleging inadequate heat at a subsequent date, but failed to appear at the hearing

except through counsel. Two of these petitions were denied due to the tenants' failure to carry the requisite burden of proof.

Although the heating units in the subject building were installed up to code requirements and operate correctly, the hearing officer found that the heaters did not bring the temperature in the units to a comfortable level. The landlords were therefore found liable to the tenants in the amount of \$100.00 per month during the winter months, or \$125.00 per month for tenants who are ill or at home for most of the day, back to January of 1993, when the tenants began to withhold rent for this reason. The tenants in six units appeal on the issue of when the landlords first had notice of the problem, alleging that the rent reductions should go back to 1981, when the prior owners installed the inadequate heaters; the tenant who raised the issue of the steam heat conversion alleges that he is a successor in interest to the terms of the original tenancy; and that the two tenants whose petitions were denied are being singled out for unequal treatment because they had to work on the day of the hearing.

The landlords also appeal the decision, arguing that rent reductions are inappropriate because there is no violation of health or safety codes; that the hearing officer's finding that the heat is "inadequate" is contradicted by the sworn deposition of a building inspector; and that the decision promulgates confusion because the landlords have no way of knowing what would be considered adequate under these circumstances.

MSC: To deny all of the appeals except for a technical correction regarding unit #6. (Marshall/Schlichtmann: 5-0)

J. Parkmerced

P001-07R, -09R & -10R

This case involves numerous petitions for certification of capital improvement costs incurred for the installation of new windows throughout this multi-unit complex. The landlord and the majority of the tenants reached a settlement in this matter, wherein the amount of the passthrough was substantially reduced. The tenants in three units appeal imposition of the reduced passthrough amount on the basis of financial hardship.

MSC: To accept the tenants' appeals and schedule a Board hearing on the issue of financial hardship.
(Schlichtmann/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. A current copy of the Rent Ordinance and Rules and Regulations.
- B. Several memos concerning personnel issues.

C. A draft revised Notice of Appeal Hearing prepared by Senior Hearing Officer Sandra Gartzman at the Board's request, which will be discussed at the September 20, 1994 Board meeting.

VII. Director's Report

Executive Director Grubb informed the Commissioners that the "Channing" amendments to the Ordinance, concerning relocation payments to tenants in the event of an "Ellis" removal of housing units, passed a first reading before the full Board of Supervisors. They will be up for second reading next week.

VIII. Old Business

The Commissioners briefly discussed draft amendments to Section 10.10 of the Rules and Regulations drafted by Commissioner L. Becker concerning the issue of constructive notice in the context of decrease in housing services claims; this issue will be continued. The Board also discussed draft amendments to Section 6.14 of the Rules and Regulations drafted by Commissioner Steane concerning rent increases in revolving roommate situations; the proposal will be circulated to the hearing officers for their input.

IV. Remarks from the Public (cont.)

Robert Pender of the Tenants' Network informed the Commissioners that there will be a Candidates' Night on September 13, 1994 at 5:00 p.m. at 455 Golden Gate Avenue, which is being jointly sponsored by several different tenants' organizations.

IX. New Business

The request for an amicus brief in the case of Stavrinides v. Cresalia was withdrawn prior to the meeting.

X. Executive Session

The Commissioners went into Executive Session pursuant to Government Code Section 54957 from 8:15 to 8:40 p.m. to discuss personnel matters.

XI. Calendar Items

September 6, 1994

9 appeal considerations (inc. 2 cont. from 8/2/94 & 1 cont. from 8/30/94)

Eviction Report

Old Business: Ordinance & Rules Changes

Executive Session: Personnel

September 13, 1994 - NO MEETING

XII. Adjournment

Vice-President L. Becker adjourned the meeting at 8:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
September 6, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

- A. 3336 Taraval St. P001-01R (cont. from 8/2/94)

Tenant appeal of a dismissal of their decrease in services petition due to their failure to appear at the hearing.

- B. 1200 Fulton St. #306 & 410 P001-02R & -03R
(cont. from 8/2/94)

Two tenant hardship appeals of a decision certifying capital improvement costs.

- C. 1271 26th Ave. P001-07A (cont. from 8/30/94)

Landlord appeal of a remand decision finding Rent Board jurisdiction over a foster care facility.

- D. 2595 - 43rd Ave. #7 P001-19R

Tenant appeal of a denial of her decrease in services claim.

- E. 1040 Greenwich St. #20, 21 & 22 P001-13A; P001-20R
thru -22R

The landlord and two tenants appeal a decision granting certification of certain capital improvement costs and determining rent overpayments due to PG&E passthrough amounts having been included in base rent.

F. 566 Vallejo St. #18 P001-23R

Tenant appeal of a decision certifying capital improvement costs on the basis of financial hardship.

G. 2888 - 16th St. #7 & 10 P001-14A

Landlord appeal of a decision determining rent overpayments and granting five claims of decreased housing services; the hearing officer also found merit to six claims of wrongful eviction attempts, not subject to appeal.

H. 1125 Broadway P001-15A

Landlord appeal of a decision certifying capital improvement costs. The landlord claims that the base rents certified in the decision are incorrect.

I. 2186 Union St. P001-24R

Tenant appeal of a decision denying a claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

2888 - 16th St. #7, 10, 9 & 2 O002-41E thru -43E & -66E

IX. Old Business

Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. Executive Session

Personnel Matters - Govt. Code Section 54957

XI. Calendar Items

XII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, September 6, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 5:42 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Gruber; How; Lightner; Marshall; Schlichtmann.
Commissioners not Present:	B. Becker; Coffino; Steane.
Staff Present:	Grubb; Wolf.

Commissioner Nash appeared on the record at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 30, 1994.
(Marshall/Schlichtmann: 4-0; Gruber abstaining)

IV. Consideration of Appeals

A. 3336 Taraval St.	P001-01R (cont. from 8/2/94)
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The tenants appealed the dismissal of their petition alleging decreased housing services, claiming that they failed to appear at the hearing or file a written excuse for non-appearance because they were out of town on a family emergency. At the August 2, 1994 meeting, the Commissioners continued consideration of the appeal in order to give the tenants a chance to submit a statement, under penalty of perjury, concerning the reason for their non-appearance at the hearing, with specific dates of the relevant events.

MSC: To accept the tenants' appeal and remand the case for a new hearing, at which the tenants must appear.
(Marshall/Schlichtmann: 5-0)

B. 1200 Fulton St. #306 & 410	P001-02R & -03R (cont. from 8/2/94)
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The landlord's petition for certification of capital improvement costs was granted in part. Two underemployed tenants appealed imposition of the passthrough

on the basis of financial hardship. At the August 2, 1994 meeting, the Commissioners continued this matter in order to obtain additional information from each of the tenants about their employment situations and to find out what type of relief each tenant was seeking. The tenant in unit #306 submitted a statement regarding his employment as a substitute teacher, accompanied by tax returns; the tenant in unit #410 failed to respond to the Board's request.

MSC: To deny both appeals. (Gruber/Schlichtmann: 5-0)

C. 1271 - 26th Ave.

P001-07A (cont. from 8/30/94)

The tenants filed a petition alleging an unlawful increase in rent from \$1,300 to \$2,200 per month for the premises, which are used as a foster care facility. The original Decision of Hearing Officer found that Rent Board jurisdiction was preempted by California Health and Safety Code Section 1518, which states that licensed care facilities are not subject to local controls on rent. Upon appeal by the tenants, the case was remanded by the Rent Board Commissioners, who found that jurisdiction was not preempted by State law, and directed the hearing officer to render a decision based on the other issues raised by the parties. In her Decision on Remand, the hearing officer found jurisdiction because California Health and Safety Code Section 1566.3 prohibits considering a foster home as anything other than a "family dwelling", and therefore it would be contrary to law to view this property as commercial, regardless of the understanding of the parties. The landlords appealed the remand decision, arguing that the legal principle of "waiver" does not apply to the facts of this case; the landlords should be entitled to a "comparables" increase due to extraordinary circumstances resulting in the initial rent having been set very low; and the amount of \$1,300 was not the initial base rent but a temporary arrangement to be followed by a long-term rent commitment as outlined in the various lease proposals promulgated by the landlords. Consideration of this case was further continued to the September 20, 1994 meeting in order to provide the tenants' attorney with an opportunity to respond to the supplement to the landlords' appeal.

D. 2595 - 43rd Ave. #7

P001-19R

The tenant's petition alleging decreased housing services was denied because the hearing officer found that the landlords effectuated repairs to the roof in a timely manner and the tenant had failed to meet her burden of proof as to other claims. The tenant appeals, alleging that the hearing officer exhibited bias against her at the hearing.

MSC: To deny the appeal. (Lightner/Gruber: 4-1; L. Becker dissenting)

E. 1040 Greenwich St. #20, 21 & 22 P001-13A; P001-20R thru -22R

This case involves three consolidated petitions, one a landlord petition for certification of capital improvement costs and two tenant petitions alleging

unlawful rent increases due to the inclusion of PG&E passthrough amounts in base rent and the landlord's failure to discontinue capital improvement passthrough amounts upon the expiration of the amortization period. The hearing officer granted certification of certain capital improvement costs; found that there was no requirement that PG&E passthrough amounts imposed in 1981 be recalculated or discontinued; but refunded amounts paid for capital improvement charges that should have been discontinued. The landlord appeals, asserting that certain items deemed to be "repair" by the hearing officer actually constituted capital improvements; and that the depiction of new fluorescent light fixtures as "luxury items" was in error. Three tenants also appeal the decision, alleging that the hearing officer was mistaken, and Rules and Regulations Section 1.22(i) required that PG&E passthroughs not be included in base rent for purposes of calculating annual increases recalculated at the time of an annual increase or dropped. One tenant objects to paying for the costs of an overhaul of the elevator, maintaining that the new elevator system is louder and therefore disturbs her sleep and that she does not use the elevator because she lives on the first floor and uses the stairs to get to the garage.

MSC: To accept the appeals of the tenants in unit numbers 22 and 30 and remand the case to the same hearing officer on the record to technically correct the Decision as to the Rules and Regulations pertaining to PG&E passthroughs; to order refunds for PG&E and/or capital improvement passthroughs improperly included in base rent for purposes of calculating annual rent increases; and to apply the 3-year Statute of Limitations on any resulting refunds owing to the tenants.
(Marshall/Schlichtmann: 5-0)

MSC: Regarding the landlord's appeal, to deny the appeal and uphold the hearing officer's determinations that certain items of elevator and boiler work and new fluorescent light fixtures did not constitute capital improvements; but to accept the appeal and remand the case to the same hearing officer on the record with instructions that the new lobby sofa constitutes a capital improvement. (Schlichtmann/Marshall: 4-1; Gruber dissenting)

It was the consensus of the Commissioners to continue the appeal of the tenant in unit #6 to the September 20, 1994 meeting in order for staff to explore settlement possibilities.

F. 566 Vallejo St. #18

P001-23R

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. The tenant in one unit appeals the decision, claiming that imposition of the \$42.74 monthly passthrough will present him with a financial hardship.

MSC: To accept the tenant's appeal and remand the case to a hearing officer to decide the financial hardship claim.
(Schlichtmann/Marshall: 5-0)

G. 2888 - 16th St. #7 & 10 P001-14A

Consideration of this appeal, along with the accompanying eviction report, was continued to the September 20, 1994 meeting.

H. 1125 Broadway P001-15A

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. On appeal, the landlord alleges that the base rent amounts certified by the hearing officer are incorrect.

MSC: To accept the appeal and remand the case to the same hearing officer on the issue of the correct base rent amounts only. (Marshall/Lightner: 5-0)

I. 2186 Union St. P001-24R

The tenant's petition alleging substantial decreases in housing services was denied because the hearing officer found that individual unit doorbells are not a service reasonably to be expected in a residential hotel and that the landlord's failure to defrost the communal refrigerator was not substantial. The tenant appeals, alleging that the resident manager had promised doorbell installation and that a claim of continued lack of hotel cleaning was overlooked by the hearing officer.

MSC: To deny the appeal. (Schlichtmann/Lightner: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. An article from the *Noe Valley Voice* concerning a landlord involved in a pending case before the Rent Board.

B. A letter from the Executive Director to John Taylor, Clerk of the Board of Supervisors, concerning the 1992 reorganization of Rent Board staff.

VI. Director's Report

Executive Director Grubb informed the Commissioners regarding the status of the case of Hislop v. Rent Board (Superior Court Case No. 961-976). No Order has been issued by Judge Pollack as of yet.

VII. Old Business

Vice-President L. Becker briefly reported on the status of amendments he has been working on to Section 10.10 of the Rules and Regulations concerning the issue of constructive notice in the context of decrease in housing services claims; this issue will be continued.

VIII. Executive Session

The Commissioners went into Executive Session pursuant to Government Code Section 54957 from 7:55 to 7:59 p.m. to discuss personnel matters.

IX. Calendar Items

September 13, 1994 - NO MEETING

September 20, 1994

11 appeal considerations (incl. 3 cont. from 9/6/94)

Eviction Report

6:00 Appeal Hearing: 1750 Vallejo St. O001-65A & O001-85R thru -97R
(post. from 7/19/94)

Old Business:

A. Hearing Protocols

B. Ordinance & Rules Changes

Executive Session: Personnel & Litigation

September 27, 1994

Public Hearing: Proposed Rules Changes

X. Adjournment

Vice-President L. Becker adjourned the meeting at 8:00 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 6:00 p.m.,
September 20, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Executive Session

Litigation - Govt. Code Section 54956.9(a)
Hislop v. Rent Board (Superior Court Case No. 961-976)

- V. Remarks from the Public
- VI. Consideration of Appeals

A. 1271 26th Ave. P001-07A (cont. from 9/6/94)

Landlord appeal of a remand decision finding Rent Board jurisdiction over a foster care facility.

B. 1040 Greenwich St. #6 P001-21R (cont. from 9/6/94)

Tenant appeal of a decision certifying certain capital improvement costs that she claims do not benefit her unit.

C. 2888 - 16th St. #7 & #10 P001-14A (cont. from 9/6/94)

Landlord appeal of a decision determining rent overpayments and granting five claims of decreased housing services; the hearing officer also found merit to six claims of wrongful eviction attempts, not subject to appeal.

D. 235 Courtland Ave. P001-16A

Landlord appeal of a decision granting a claim of decreased housing services but finding a failure to repair claim to be moot.

E. 1301 - 31st Ave. P001-25R

Tenant appeal of a dismissal of a decrease in services claim due to lack of jurisdiction.

F. 2655 Pine St. P001-23A

Landlord appeal of a decision granting a partial increase due to increased operating expenses, but denying the portion of the increase attributable to supplemental property taxes.

G. 650 Ellis St. #29 P001-26R

Attorney for the tenant's estate appeals the dismissal of the tenant's decrease in services claim due to the tenant's failure to appear at the remand hearing.

H. 5 Rico Way P001-18A

The landlord appeals a decision granting increases due to increased operating expenses and some, but not all, capital improvement costs petitioned for.

I. 2611 California St. #1 P001-20A & P001-35R

The landlord and tenants appeal the decision granting claims of decreased housing services and failure to repair.

J. 1655 Lombard St. P001-21A

Landlord appeal of a decision granting a decreased housing services claim.

K. 3380 - 24th St. #2 P001-22A

Landlord appeal of a decision denying a claim of decreased housing services but determining rent overpayments.

VII. Communications

VIII. Director's Report

IX. Consideration of Allegations of Wrongful Evictions

2888 - 16th St. #7, 10, 9 & 2 O002-41E thru -43E & -66E

X. Old Business

A. Hearing Protocols

B. Ordinance and Rules Changes: Issues for Discussion

V. Remarks from the Public (cont.)

XI. New Business

XII. Appeal Hearing

6:00 1750 Vallejo St. O001-65A & O001-85R thru -97R
(post. from 7/19/94)

XIII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIV. Calendar Items

XV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, September 20, 1994 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 6:17 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber; Lightner; Marshall; Nash; Schlichtmann.
Commissioners not Present:	B. Becker; How; Steane.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of September 6, 1994.
(Schlichtmann/Lightner: 5-0)

IV. Executive Session

The Commissioners went into Executive Session from 6:20 to 6:50 p.m. pursuant to Government Code Section 54956.9(a) to discuss the case of Hislop v. Rent Board (Superior Court Case No. 961-976) with Deputy City Attorney Ilene Dick.

V. Consideration of Appeals

A. 1271 - 26th Ave.

P001-07A (cont. from 9/6/94)

The tenants filed a petition alleging an unlawful increase in rent from \$1,300 to \$2,200 per month for the premises, which are used as a foster care facility. The original Decision of Hearing Officer found that Rent Board jurisdiction was preempted by California Health and Safety Code Section 1518, which states that licensed care facilities are not subject to local controls on rent. Upon appeal by the tenants, the case was remanded by the Rent Board Commissioners, who found that jurisdiction was not preempted by State law, and directed the hearing officer to render a decision based on the other issues raised by the parties. In her Decision on Remand, the hearing officer found jurisdiction because California Health and Safety Code Section 1566.3 prohibits considering a foster home as anything other than a "family dwelling", and therefore it would be contrary to law to view this property as commercial,

regardless of the understanding of the parties. The landlords appealed the remand decision, arguing that the legal principle of "waiver" does not apply to the facts of this case; the landlords should be entitled to a "comparables" increase due to extraordinary circumstances resulting in the initial rent having been set very low; and the amount of \$1,300 was not the initial base rent but a temporary arrangement to be followed by a long-term rent commitment as outlined in the various lease proposals promulgated by the landlords. Consideration of this case had been continued from the September 6th meeting in order to provide the tenants' attorney with an opportunity to respond to the supplement to the landlords' appeal.

MSC: To accept the landlords' appeal and schedule a Board hearing on the issue of landlord hardship and to determine the proper base rent. (Lightner/Gruber: 4-1; L. Becker dissenting)

B. 2655 Pine St.

P001-23A

The landlord's petition for increases due to increased operating expenses was granted, in part, by the hearing officer. The landlord did not receive the maximum 7% increases allowable, however, because the landlord chose not to pro-rate the supplemental property taxes he paid in order to allocate the costs to the time periods during which they were incurred, as per the requirements of Rules Section 6.10(b). On appeal, the landlord asserts that treating the supplemental tax payment in the manner deemed appropriate by the hearing officer distorts the picture of his actual costs, by increasing the property tax category in Year One, when he did not pay the supplemental taxes at that time nor were they assessed for that time period. After discussion, Commissioner Marshall volunteered to conduct some research on this issue and consideration of this appeal was continued to the October 4, 1994 meeting.

C. 650 Ellis St. #29

P001-26R

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,967.50. The landlord had failed to appear at the hearing, and explained on appeal that he thought the matter had been settled and that the tenant was not going to proceed with his petition. The landlord's appeal was accepted and the case was remanded for a new hearing. As the tenant failed to appear at the remand hearing, his petition was dismissed. Shortly after the dismissal, the attorney for the tenant's estate arrived and explained that the tenant had died. On appeal, the attorney for the tenant's estate argues that the matter should have been decided on the record, and provides a Declaration attesting to his unavoidable delay in arriving at the hearing.

MSC: To accept the tenant's appeal and remand the case for a new hearing. (Marshall/L. Becker: 5-0)

D. 2611 California St. #1

P001-20A & P001-35R

The tenants' petition alleging decreased housing services and the landlord's failure to make requested repairs was granted by the hearing officer and the landlord was found liable to the tenants in the amount of \$5,810.00 due to serious habitability defects in the unit. An otherwise allowable annual increase was also deferred until leaks and resulting damage were remedied. On appeal, the landlord alleges that: the rent reductions are excessive; as there was a drought for much of the period in question, there was minimal inconvenience to the tenants; and the hearing officer does not have the authority to assess punitive damages to the landlord. The tenants also appeal, asserting that certain of the hearing officer's findings were based on conciliated agreements reached between the parties at the hearing. The tenants allege that the landlord has failed to act on promises that were the basis for these agreements, and the tenants therefore wish to re-open issues raised in their petition that the hearing officer considered settled.

MSC: To deny the landlord's appeal. (Marshall/L. Becker: 4-1; Gruber dissenting)

MSC: To accept the tenants' appeal and remand the case to the same hearing officer to determine whether the amounts granted are appropriate in light of the time periods services were actually decreased or other relevant factors. (Lightner/Marshall: 5-0)

E. 5 Rico Way

P001-18A

The landlord's petition for increases due to capital improvement costs and increased operating expenses was granted, in part, by the hearing officer. On appeal, the landlord claims that the hearing officer erred in the following respects: (1) the tenants in unit numbers 204 and 201 should be granted the same passthrough amount; (2) the 10% "cap" on capital improvement passthroughs should not be calculated on the petition base rent but, rather, annual and operating expense increases should be added in first; (3) the landlord should be entitled to the amounts petitioned for in the amended petition, and not limited to the amounts in the original petition; and (4) as the costs of roof tile work were found to benefit the tenants in two units only, the landlord was deprived of passing through the full cost of the work because he had petitioned for allocation to all the tenants in the building.

MSC: To accept the landlord's appeal and remand the case to the hearing officer to issue a technical correction regarding issue #3; to continue consideration of issue #4 to the October 4, 1994 meeting; and to deny the appeal as to all other issues. (Marshall/Lightner: 5-0)

VI. Appeal Hearing

1750 Vallejo St. O001-65A & O001-85R thru -97R

The landlord's petition for certification of capital improvement and earthquake-related repair costs was granted, in part, by the hearing officer. Two tenants appealed the decision on the basis of financial hardship, as well as grounds enumerated by twelve other tenants, including but not limited to the following assertions: (1) the 5-year "Statute of Limitations" on capital improvement passthroughs should be applied, since it was in effect at the time the petition was amended; (2) the hearing officer erred in granting overhead and oversight charges for the landlord's employees and management company; (3) some items certified as capital improvements were in good condition and not in need of replacement; (4) 10% imputed interest on the capital improvement costs should not have been awarded; (5) the base rents for the tenants in unit numbers 501 and 304 were incorrect because they had given up their garages prior to the filing of the landlord's petition; and (6) the tenant in unit #B had been told by the landlord that he need not oppose the capital improvement petition because he would not be subject to any passthrough. The landlord appealed on the following grounds, among others: (1) the hearing officer erred in categorizing substantial elevator renovations as routine repairs rather than capital improvements; (2) the estimator's valuation should not routinely be the amount certified when it is less than the landlord's actual cost; and (3) the costs for: (a) plumbing in the "05" tier; (b) installation of a new garage ventilation system; and (c) emergency boiler repair should have been certified.

The Board voted to accept the hardship appeals of the tenants in unit numbers 105 and 306 and schedule a Board hearing; as well as to accept for Board hearing tenant issue numbers 4, 5 and 6 above. As to the landlord's appeal, landlord issue numbers 1, 2 and 3(b) above were accepted for Board hearing. The appeals were denied as to all other issues.

Several tenants appeared, along with their counsel; the landlord was also in appearance, accompanied by several witnesses and his attorney. At the commencement of the hearing, the attorneys for the parties stipulated as follows: as to the hardship appeals of the tenants in unit numbers 105 and 306, to waive imposition of the capital improvement passthrough unless and until such time as the tenants' financial circumstances change, at which time the parties can come before a Rent Board hearing officer; the base rents for the tenants in unit numbers 501 and 304 for purposes of imposition of the 10% "cap" shall be the rental amounts minus garage charges; and the tenant in unit #B shall receive no capital improvement passthrough. Additionally, the landlord withdrew the claim regarding the garage ventilation system.

Prior to hearing the facts of the case, the landlord's attorney requested that the Commissioners decide whether or not they would exercise their discretion to grant less than 10% interest on capital improvement costs if supported by the facts in this case. At the August 2, 1994 meeting, the Board heard the case at 665 Pine Street (O001-58 & -59A; O001-48R thru -76R), in which the tenants

also challenged the allowance of interest at the rate of 10%. As part of the decision in that matter, the Board upheld their past practice of granting landlords 10% imputed interest on capital improvement costs. As the Board will be holding a Public Hearing on this issue at the September 27th meeting, the landlord's attorney argued that there was no reasonable basis to treat the instant case differently from prior cases, including 665 Pine Street. The tenant's attorney argued that there is no precedent established from one Rent Board case to the next, and the facts in the instant case are materially different from the case at 665 Pine Street. The Commissioners went off the record after hearing arguments from the attorneys to discuss the policy issues raised, and made the following motion:

MSC: To uphold the hearing officer's decision as to the allowance of 10% imputed interest on the landlord's capital improvement costs. (Gruber/Lightner: 3-2; L. Becker, Marshall dissenting)

The Commissioners went back on the record to consider the remaining issues of the elevator renovations and estimator values. Due to the lateness of the hour and the fact that almost all of the affected tenants are senior citizens, the tenant's attorney asked that the hearing be continued. After discussion, it was agreed to continue the matter to the October 18, 1994 meeting at 6:00 p.m.

V. Consideration of Appeals (cont.)

F. 1040 Greenwich St. #6

P001-21R (cont. from 9/6/94)

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. On appeal, the tenant in unit #6 objected to paying for the overhaul of the elevator, maintaining that the new elevator system is louder and therefore disturbs her sleep and that she does not use the elevator because she lives on the first floor of the building and takes the stairs to get to the garage. Consideration of this appeal was continued from the September 6th meeting in order for staff to investigate settlement possibilities with the parties.

MSC: To deny the appeal. (Lightner/Gruber: 3-2; L. Becker, Marshall dissenting)

G. 2888 - 16th St. #7 & 10

P001-14A

Two tenant petitions alleging decreased housing services were granted, in part, by the hearing officer and the landlord was found liable to the tenants in unit #7 in the amount of \$1,115.00 and in the amount of \$212.50 to the tenants in unit #10. Additionally, rent overpayments in the amount of \$2,350.68 were determined to be owed to the tenants in unit #10. The landlord appeals, alleging that: the hearing officer miscalculated the amount of the rent overcharges, as the tenants paid no rent for the months of August and September 1993; the landlord should not be held liable for rent overcharges accruing from a period before her ownership of the property, because the prior

owner filed for bankruptcy and the tenants' only remedy would have been an offset against rent payments owing during the pendency of the bankruptcy proceeding; and that the hearing should be re-opened regarding a period prior to the current owners' possession of the property, when the tenants in unit #7 failed to pay rent.

MSC: To deny the landlord's appeal as to the decrease in services rent reductions granted to the tenants in both units; as to unit #10 only, to accept the landlord's appeal and schedule a Board hearing on the issue of the effect of the prior owner's bankruptcy on the rent overpayments determined to be owed to the tenants and to ascertain amounts owing, if any, due to unpaid rent. (Coffino/Lightner: 5-0)

H. 235 Cortland Ave.

P001-16A

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$547.50. The tenant's allegation of the landlord's failure to repair was rendered moot because the tenant vacated the unit prior to paying the noticed rent increase. On May 27, 1994, the landlord filed an appeal form, but gave no grounds for the appeal because he stated he would be out of the country until August 1st and needed an extension in order to obtain counsel. On August 15, 1994, the Deputy Director wrote the landlord and requested clarification regarding the grounds for appeal, but received no response.

MSC: To deny the appeal. (Marshall/Gruber: 5-0)

I. 1301 - 31st Ave.

P001-25R

The tenant's appeal was filed six days late because the tenant alleges that she believed she had fifteen days from the date she received the decision to file her appeal.

MSC: To find good cause for the late filing of the appeal.
(Coffino/Gruber: 5-0)

The tenant's petition alleging decreased housing services was dismissed due to lack of jurisdiction because the hearing officer found that the landlord had established that the 4-unit building was his principal place of residence. The tenant appeals, asserting that she was misinformed by the hearing officer in that she was told that the landlord had the burden of proving that the building was his principal place of residence, and that she did not need to provide evidence that he did not in fact live there.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; L. Becker, Marshall dissenting)

J. 1655 Lombard St.

P001-21A

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$877.50 due to lack of heat in the unit for several months. On appeal, the landlords maintain that the tenants were not given an annual rent increase and late charges and returned check fees were waived to compensate for lack of heat; that portable heaters were provided to the tenants, who also had the use of a working fireplace; that there was a new furnace in operation at least one week prior to the date cited by the hearing officer; and that repayment of the amount owed would present them with a financial hardship.

MSC: To deny the appeal on the issue of the rent reductions granted due to decreased housing services but to continue the matter in order to provide the landlords with an opportunity to file a hardship application. (L. Becker/Marshall: 5-0)

K. 3380 - 24th St. #2

P001-22A

The tenant's claim of decreased housing services due to the loss of use of a parking space was denied because the hearing officer found that a parking space was never provided as a housing service prior to or since the inception of the tenancy. The tenant's claim of wrongful rent increases was granted, however, and the landlord was found liable to the tenant in the amount of \$6,300.00. On appeal, the landlord argues that she was not represented at the hearing on the tenant's petition, and thought that the only issue to be addressed would be the parking space. She maintains that the tenant's rent was increased due to the addition of two bedrooms and a bathroom to the rear of the unit, which constituted a new agreement based on additional housing services.

MSC: To accept the landlord's appeal on the issue of the rent increases and remand the case to the same hearing officer to examine the circumstances surrounding expansion of the unit. A new hearing will be held only if necessary. (Lightner/Gruber: 5-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a draft appeal decision regarding the case at 99 Jersey Street (O002-45A), heard on April 19, 1994 and decided on July 19, 1994.

VIII. Consideration of Allegations of Wrongful Evictions

2888 - 16th St. #7, 10, 9 & 2

O002-41E thru -43E & -66E

This matter will be considered at the October 4, 1994 Board meeting.

IX. Old Business

Due to the lateness of the hour, the issues of Ordinance and Rules Changes and Hearing Protocols were continued to a future meeting.

X. Calendar Items

September 27, 1994

Public Hearing: Proposed Rules Changes

October 4, 1994

10 appeal considerations (incl. 2 cont. from 9/20/94)

Eviction Report

6:00Appeal Hearing: 54 Brighton St. P001-08A (acpt. 8/30/94)

Old Business:

A. Hearing Protocols

B. Ordinance & Rules Changes

Executive Session: Personnel

October 11, 1994 - NO MEETING

XI. Adjournment

President Coffino adjourned the meeting at 10:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
September 27, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Public Hearing
 - Proposed Changes to Rules and Regulations Section 7.14
Regarding the Allowance of Interest for Capital Improvement or
Rehabilitation Work and Section 2.18 Pertaining to Financial
Hardship Hearings
- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)
- IX. New Business
- X. Calendar Items
- XI. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, September 27, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:50 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; How; Lightner; Marshall; Nash; Steane.
Commissioners not Present:	Schlichtmann.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

Approval of the Minutes of the September 20, 1994 meeting was continued to the October 4, 1994 meeting.

IV. Remarks from the Public

Robert Pender of the Tenants' Network invited the Commissioners and assembled members of the public to a fund-raiser for Proposition I.

V. Public Hearing

The Commissioners commenced the Public Hearing on proposed amendments to the Rules and Regulations by taking comment on a change to Rules Section 2.18 which would allow the Board to delegate their authority to hear hardship appeals to hearing officers. Two versions of revised Section 2.18 were put out for public comment. The first version precluded further appeal to the Board after the hearing officer's decision on remand was rendered. The second version required that there be a unanimous vote of the Commissioners in order to delegate such a case to a hearing officer, and allowed for further appeal to the Commissioners in cases where the grounds for appeal were fraud, mistake or when the hearing officer's decision was not supported by the facts in the record.

Eight members of the public spoke to the proposals. The majority of the speakers expressed a strong preference for the right to further appeal to the Board after the hearing officer's decision is rendered.

The Commissioners then heard from 16 members of the public (9 landlords and 7 tenants) regarding a proposal promulgated by Commissioner Coffino to grant imputed interest on capital improvement costs only in an amount proved to be reasonable by the landlord or tied to rates of return on certificates of deposit, rather than the current practice of granting 10% in all cases. The tenants in attendance spoke to their belief that this is a long-overdue and necessary change; that 10% is an unreasonable rate of interest in the present economy; that the purpose of the Rent Ordinance is to protect tenants from excessive rent increases, and not to guarantee landlords a certain rate of return; and several speakers questioned the fairness of various aspects of capital improvement passthroughs. The landlords stated their belief that the present rate of 10% is actually too low, and suggested that the rate be raised to 14% to provide a fair rate of return; posited the idea of going to the Board of Supervisors for an Ordinance change which would allow for the inclusion of capital improvement increases in base rent; addressed the need for the Rules to provide incentives for landlords to do work, compensate for lost opportunity costs and address the greater risks inherent in real estate when compared to other investments; and presented evidence of the difficulty in obtaining "seconds" to fund such work and only at rates significantly higher than 10%.

After the conclusion of public testimony, the Commissioners discussed the proposed change to Rules Section 2.18 and passed the following motion:

MSC: That Rules and Regulations Section 2.18, Waiver of Regulations, shall be amended to read as follows: The Board may grant exception to these regulations for good cause shown in the interest of justice or to prevent hardship. If a majority of the Board votes to accept a landlord or tenant appeal on the basis of financial hardship, they may delegate their authority to hear and decide such a claim to a hearing officer, subject to the right of appeal to the Board. (Additions underlined) (Coffino/Marshall: 5-0)

The Commissioners then discussed the proposed changes to Rules Section 7.14 in light of the public testimony. Due to the lateness of the hour, further consideration of this matter was continued to the October 4, 1994 Board meeting.

VI. Communications

In addition to correspondence regarding the proposals for changes to the Rules and Regulations, the Commissioners received the following communications:

A. The monthly workload statistics for August.

B. Staff rosters showing the numbers for the new phones installed at the Rent Board office.

C. A letter from Senior Hearing Officer Sandra Gartzman on behalf of the hearing officers to Josie Mooney, Staff Director for SEIU Local 790, regarding a memorandum from Chief Shop Steward Ernestine-Cade Hill to the Rent Board Commissioners. In their letter, the hearing officers take issue with allegations made by Ms. Cade-Hill in her memorandum that they feel question their integrity and qualifications, and they dispute in particular statements made by her that imply that minority hearing officers have been racially discriminated against. They also ask for support from SEIU in opposing a proposal by Supervisor Willie Kennedy to return to contracting out Rent Board hearing officer work, which would lead to the loss of jobs for current hearing officer staff.

VII. Director's Report

Executive Director Grubb informed the Commissioners that a new phone system, including new phone numbers, has been installed which will reduce the agency's costs. The new number to access the Rent Board office directly is 252-4601. The 554-9550 information line is still working and the number will not change.

VIII. Calendar Items

October 4, 1994

10 Appeal Considerations (incl. 2 cont. from 9/20/94)

1 Eviction Report

6:00 Appeal Hearing: 54 Brighton St. P001-08A (acpt. 8/30/94)

Old Business:

A. Ordinance & Rules Changes

B. Hearing Protocols

Executive Session: Personnel

October 11, 1994 - NO MEETING

IX. Adjournment

President Coffino adjourned the meeting at 9:20 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
October 4, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 2655 Pine St. P001-23A (cont. from 9/20/94)

Landlord appeal of a decision granting a partial increase due to increased operating expenses, but denying the portion of the increase attributable to supplemental property taxes.

B. 5 Rico Way P001-18A (cont. from 9/20/94)

The landlord appeals a decision granting increases due to increased operating expenses and some, but not all, capital improvement costs petitioned for.

C. 395 - 29th Ave. P001-19A

Landlord appeal of a decision granting a claim of decreased housing services.

D. 775 Post St. #305 P001-37R

Tenant appeal of the denial of his petition alleging decreased housing services due to noise from another tenant in the building.

E. 387 Ellis St. P001-38R

Tenant appeal of a decision granting certain claims of decreased housing services, but denying others.

F. 156 Duboce Ave. #1 & #7 P001-24A

Landlord appeal of a decision granting claims of decreased housing services for two units, denying the failure to repair claim of the tenant in unit #1 and refunding rent overpayments to the tenant in unit #7.

G. 980 Potrero Ave. #204 P001-25A

Landlord appeal of a decision determining rent overpayments due to unlawful rent increases.

H. 968 Capp St. P001-36R

Tenant appeal of a remand decision certifying capital improvement costs on the basis of financial hardship.

I. 542 - 25th Ave. #3 P001-39R thru -41R

Three tenants appeal a decision certifying capital improvement costs.

J. 240 Hyde St. #203 P001-26A

Landlord appeal of a decision granting a claim of decreased housing services on the grounds of lack of jurisdiction.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

2888 - 16th St. #7, 10, 9 & 2 O002-41E thru -43E & -66E

IX. Old Business

A. Ordinance and Rules Changes: Issues for Discussion

B. Hearing Protocols

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 54 Brighton St. P001-08A (acpt. 8/30/94)

XII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 4, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present: B. Becker; L. Becker; Coffino; Gruber;
Lightner; Marshall; Nash; Schlichtmann;
Steane.
Staff Present: Grubb; Wolf.

Commissioner How appeared on the record at 5:45 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 20, 1994.
(Coffino/L. Becker: 5-0)

MSC: To approve the Minutes of September 27, 1994.
(Marshall/Coffino: 5-0)

IV. Remarks from the Public

Three individuals commented on a proposal put forward at a Public Hearing at the Board meeting on September 27, 1994 and later revised by Commissioner Coffino, to lower the rate of imputed interest on capital improvement costs (Rules and Regulations Section 7.14). Al Goodwin expressed his opinion that the specific wording of the revised proposal is a "travesty". He alleged that there would be no allowance of interest if a tenant raised an objection, and stated that in many cases the actual rate of interest is difficult to prove. He also expressed his concern regarding the difficulty of doing the necessary calculations. Tim Carrico of the S.F. Apartment Association responded to assertions made at last week's meeting by some tenants by stating that landlords are not asking the Board to guarantee them a certain rate of return on properties, but he did admonish the Commissioners to keep in mind recent court decisions regarding a landlord's right to a fair rate of return. He also stated his belief that the Ordinance cannot contain any absolute "caps" on increases without regard to extraordinary circumstances; that landlord hardship claims should be examined only in light of the building at issue, and not the

landlord's entire financial picture; and that the Board should consult with the City Attorney regarding the legality of Proposition H, because the courts have said that landlords are entitled to increases commensurate with the full level of inflation. Gary Tutin of the Housing Committee stated that he likes the revised proposal.

V. Consideration of Appeals

A. 980 Potrero Ave. #204

P001-25A

The tenant's petition alleging unlawful increases in rent was granted by the hearing officer, who found the landlord liable to the tenant in the amount of \$2,283.72. Under the terms of a prior conciliation agreement between the parties, the landlord was required to obtain a Notice of Abatement of roof leaks and issue a 30-day notice of restoration of the prior base rent amount before effectuating allowable annual increases, which he failed to do. On appeal, the landlord asserts that the decision is unfair because the work had been completed when he gave the tenant otherwise allowable annual increases.

MSC: To deny the landlord's appeal. The case shall, however be remanded to the hearing officer for a numerical correction.
(Marshall/B. Becker: 5-0)

B. 5 Rico Way

P001-18A (cont. from 9/20/94)

The landlord's petition for increases due to capital improvement costs and increased operating expenses was granted, in part, by the hearing officer. On appeal, the landlord claims that the hearing officer erred in the following respects: (1) the tenants in unit numbers 204 and 201 should be granted the same passthrough amount; (2) the 10% "cap" on capital improvement passthroughs should not be calculated on the petition base rent but, rather, annual and operating expense increases should be added in first; (3) the landlord should be entitled to the amounts petitioned for in the amended petition, and not limited to the amounts in the original petition; and (4) as the costs of roof tile work were found to benefit the tenants in two units only, the landlord was deprived of passing through the full cost of the work because he had petitioned for allocation to all the tenants in the building. At the September 20th meeting, the Board voted to accept the landlord's appeal and remand the case to the hearing officer to issue a technical correction regarding issue #3; to continue consideration of issue #4; and to deny the appeal as to all other issues. After discussion of input received from staff, the below motion was passed as to issue #4 in the landlord's appeal:

MSC: To accept the landlord's appeal regarding the issue of allocation of the costs of the roof tile work and to remand the case to the hearing officer to: allocate the costs of the roof tile work to the tenants in unit numbers 101 and 102 only, resulting in a monthly passthrough of \$26.54 for this work and a total

passthrough of \$249.94 to the tenants in these two units. If the tenants in unit numbers 101 and 102 file a written objection within 15 days of the mailing of this notice, a remand hearing shall be scheduled. Absent such objection, the hearing officer shall correct the decision on the record. (Lightner/Gruber: 5-0)

VI. Old Business

A. Ordinance and Rules Changes

The Commissioners discussed the proposed changes to Rules and Regulations Section 7.14, particularly with regard to the changes in the revised proposal and in light of additional public comment earlier in the meeting, and passed the below motion:

MSC: To adopt revised Section 7.14 of the Rules and Regulations, effective as to petitions filed on or after October 18, 1994, as follows below:

Section 7.14 Allowance of Interest

A landlord who expends funds for capital improvements or rehabilitation work shall be entitled to a reasonable rate of interest. Any allowance of interest, whether imputed or real, in favor of a landlord pursuant to this section shall be limited to no more than ten (10) percent and shall be amortized over a period equal of the amortization period of the improvement, subject to the limitations contained in Section 7.12(d). The following rules shall apply to any request for the allowance of interest.

(a) Allowance of Actual Interest Incurred. The landlord has the burden of proof to establish the actual rate of interest. To meet this burden, the landlord must submit, at a minimum, either the applicable loan agreement, promissory note or other admissible documentary evidence substantiating the rate of interest. In addition, the landlord has the burden to show that the actual rate of interest for which an allowance is sought is reasonable under the circumstances.

(b) Allowance of Imputed Interest. In cases where the landlord does not incur or prove in accordance with subsection (a) any actual interest expense on funds used for capital improvements or rehabilitation work, the landlord shall be entitled to an allowance of imputed interest. The rate of imputed interest shall be determined in accordance with the following rules:

(1) On March 1 of each year, in accordance with subsection (b)(2), the Board shall publish two rates of imputed interest. Subject to the ten (10) percent limitation contained in the first paragraph of this rule, the published rates shall constitute the rates of imputed interest to be allowed on petitions filed on or after March 1 through February 28 (or February 29, as the case may be) the following year.

(2) The first rate shall be the yield to maturity (i.e., the effective rate of return) quoted on the last business day of

January in the Wall Street Journal for seven-year Treasury Notes (rounded to the nearest tenth) that mature in February of the seventh year and shall apply to certified capital improvement costs amortized over a seven-year period in accordance with Section 7.12(c). The second rate shall be the yield to maturity quoted on the last business day of January in the Wall Street Journal for ten-year Treasury notes (rounded to the nearest tenth) that mature in February of the tenth year and shall apply to certified capital improvement costs amortized over a ten-year period in accordance with Section 7.12(c).

(c) Government Subsidies or Guarantees. Notwithstanding subparagraphs (a) and (b) of this Section, if the interest is less than 10 percent due to governmental or any other subsidy or guarantee, the landlord shall only be entitled to the actual rate of interest incurred.

(d) This Section was amended on October 4, 1994 and is effective for petitions filed on or after October 18, 1994. The Board shall publish the applicable rate of interest for petitions filed between October 18, 1994 and February 28, 1995 before October 18, 1994.

(Coffino/Marshall: 3-2; Gruber, Lightner dissenting)

V. Appeal Considerations (cont.)

C. 2655 Pine St.

P001-23A (cont. from 9/20/94)

The landlord's petition for increases due to increased operating expenses was granted, in part, by the hearing officer. The landlord did not receive the maximum 7% increases allowable, however, because he did not follow the requirements of Rules Section 6.10(b) and pro-rate the costs of supplemental property taxes. On appeal, the landlord asserts that treating the supplemental tax payment in the manner deemed appropriate by the hearing officer distorts the picture of his actual costs, by increasing the property tax category in Year One, when he did not pay the supplemental taxes at that time nor were they assessed for that time period. This matter was continued from the September 20th meeting after Commissioner Marshall volunteered to conduct some research on this issue.

MSC: To accept the landlord's appeal and remand the case to the hearing officer on the record in order to allocate the entire supplemental property tax payment to Year Two, as was done by the landlord in his petition. (Marshall/Lightner: 5-0)

D. 395 - 29th Ave.

P001-19A

The tenant's petition alleging substantial decreases in housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenant in the amount of \$967.50 due to cracks in the laundry room and bathroom walls and an inoperable fireplace. On appeal, the landlord alleges that: the hearing officer erred regarding dates that the tenant provided notice of the defects, and that long-term notice was not provided; that the tenant perjured herself and engaged in collusion with the repair persons employed by the

landlord, both of which were ignored by the hearing officer; that \$30.00 per month is an excessive amount of compensation for cracked walls; and that declarations provided by the tenant should not have been accepted into evidence.

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

E. 775 Post St. #305

P001-37R

The tenant filed a petition alleging a substantial decrease in housing services due to the noise created by tenants in another unit in the building. The petition was denied because the hearing officer found that the tenant had failed to prove that the noise level was unreasonable, that the landlord's manager had made attempts to lessen the inconvenience to the tenant and, finally, that the offending tenants were evicted by the landlord. The tenant appeals, alleging that the landlord's manager had assured him that the noisy tenants would be moving in the near future; that the hearing officer minimized the level of noise in her decision; and that the hearing officer was biased against him.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

F. 387 Ellis St.

P001-38R

The tenant's petition alleging decreased housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenant in the amount of \$360.00 due to wall defects and a plumbing problem. The tenant appeals the denial of the other claims in his petition, maintaining that the other party had presented no evidence sufficient to refute his contentions; that the hearing officer erred in finding overhead noise due to loose floor panels and padding removal to not be "substantial"; and that issues deemed to be untimely by the hearing officer because they occurred prior to one year before the filing of the petition were still continuing at the present time.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

G. 156 Duboce Ave. #1 & #7

P001-24A

The tenants in two units filed petitions alleging decreased housing services and the landlord's failure to make requested repairs. The hearing officer held the landlord liable to the tenants in the amounts of \$60.00 per month due to lack of adequate heat and \$30 and \$35 (5% of base rent) due to lack of hot water in the units. Additionally, rent overpayments in the amount of \$88.00 were determined to be owed to the tenant in unit #7. The landlord appeals, alleging that: there is insufficient evidence to support the findings; he has not had time to examine and respond to additional evidence and documents submitted after the hearing was concluded; and he has new evidence to submit that he did not have an opportunity to present at the hearing.

After discussion, it was the consensus of the Board to continue consideration of this matter to the October 18, 1994 meeting.

H. 968 Capp St.

P001-36R

The landlord's petition for certification of capital improvement costs for one unit was granted, resulting in a \$25.98 monthly passthrough to the tenant. The tenant appeals the decision on the basis of financial hardship

MSC: To accept the tenant's appeal and remand the case to the hearing officer to decide the tenant's claim of financial hardship. (Coffino/Marshall: 5-0)

I. 542 - 25th Ave. #3

P001-39R thru -41R

The landlords' petition for certification of capital improvement costs for four units was granted, in part, by the hearing officer. Three tenants appeal the decision, asserting that: the hearing officer erred regarding the allocation of costs of new windows; the furnaces are hooked up improperly; the landlords received a low-interest FEMA loan to do the work and, therefore, should not be entitled to interest at the rate of 10%; and there are calculation errors on Table 1 of the decision.

MSC: To accept the tenants' appeals and remand the case to the hearing officer for a remand hearing on the issues of the rate of interest the landlord paid on funds obtained to effectuate the work; on the window allocation issues raised by the tenants; and for a technical correction, if necessary. (Coffino/Gruber: 5-0)

J. 240 Hyde St. #203

P001-26A

The tenant's petition alleging decreased housing services in this residential hotel was granted, in part, and the landlord was found liable to the tenant in the amount of \$480.00 due to the lack of a dependable hot water supply. On appeal, the landlord, Conard House Inc., alleges that the premises are exempt from Rent Board jurisdiction because rents are regulated under the auspices of a California Housing Rehabilitation Program ("CHRP") loan.

MSC: To excuse Commissioner Marshall from consideration of this appeal. (Coffino/Lightner: 5-0)

MSC: To dismiss the tenant's petition due to lack of jurisdiction. (Lightner/Steane: 5-0)

VII. Communications

In addition to correspondence regarding cases on the calendar and the proposed amendments to Rules and Regulations Section 7.14, the Commissioners received a letter from Ed Ilumin of the Human Rights Commission regarding the case at 1271 - 26th Avenue (O001-20R).

VIII. Director's Report

Executive Director Grubb informed the Board that the issue of a Management Audit of the Rent Board will be heard before the Rules Committee of the Board of Supervisors on October 18th. President Coffino will attend and speak on behalf of the Board.

IX. Consideration of Allegations of Wrongful Evictions

2888 - 16th St. #7, 10, 9 & 2

O002-41E thru -43E & -66E

The landlord in this case engaged in a series of actions constituting a pattern of harassment toward the tenants in the building, including unlawful attempts to increase rents and security deposits and subsequent refusal to accept lawful rent amounts tendered. Pursuant to the recommendation of the hearing officer, the Board instructed staff to write a strong cautionary letter to the landlord.

VI. Old Business (cont.)

B. Hearing Protocols

This issue was continued to a future meeting.

X. Appeal Hearing

54 Brighton St.

P001-08A (acpt. 8/30/94)

This appeal hearing was postponed to the meeting on December 6, 1994 pursuant to a request from the tenant which was documented by a note from her doctor.

XI. Calendar Items

October 11, 1994 - NO MEETING

October 18, 1994

7 appeal considerations (1 cont. from 9/20/94; 1 cont. from 10/4/94)

Appeal Hearings:

6:00 1750 Vallejo St.

O001-65A & O001-85R thru -97R
(cont. from 9/20/94)

7:30 1021 Greenwich St. #5

O001-70A (rescheduled from 10/4/94)

Old Business:

A. Hearing Protocols

B. Ordinance & Rules Changes

Executive Session: Personnel

October 25, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 8:45 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
October 18, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals
 - A. 1655 Lombard St. P001-21A (cont. from 9/20/94)

Landlord appeal of a decision granting a decreased housing services claim.
 - B. 156 Duboce #1 & #7 P001-24A (cont. from 10/4/94)

Landlord appeal of a decision granting claims of decreased housing services for two units, denying the failure to repair claim of the tenant in unit #1 and refunding rent overpayments to the tenant in unit #7.
 - C. 425 Hyde St. #42 P001-28A

Landlord appeal of a decision granting a claim of decreased housing services.
 - D. 2350-52 Polk St. P001-42R & -43R

The tenants in two units appeal the decision certifying passthroughs of capital improvement costs.
 - E. 909 Vallejo St. P001-27A

Landlord appeal of a decision refunding rent overpayments.
 - F. Parkmerced P001-27R thru -34R

Tenant appeals of a decision certifying capital improvement costs on the grounds of financial hardship.

G. 228 Diamond St. P001-29A

Landlord appeal of a decision granting a claim of decreased services.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

A. Hearing Protocols

B. Ordinance & Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearings

6:00 1750 Vallejo St. O001-65A & O001-85R thru -97R
(cont. from 920/94)

7:30 1021 Greenwich St. #5 O001-70A (rescheduled from 10/4/94)

XII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIII. Calendar Items

XIV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 18, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:45 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	How.
Staff Present:	Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of October 4, 1994.
(Marshall/Lightner: 5-0)

IV. Remarks from the Public

Robert Pender of the Tenants' Network invited the Commissioners to a joint fundraiser with Supervisorial candidate Tom Ammiano to benefit Proposition I on the November ballot. Al Goodwin informed the Commissioners that the current rates in effect for imputed interest on capital improvement costs are 5.3 and 5.9% because, in accordance with amended Rule 7.14, the published rates are those in effect as of the end of January of the current year. He suggested that the Board allow landlords to use current rates, which would be somewhat higher.

V. Consideration of Appeals

A. 1655 Lombard St. P001-21A (cont. from 9/20/94)

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$877.50 due to lack of heat in the unit for several months. On appeal, the landlords maintain that the tenants were not given an annual rent increase and late charges and returned check fees were waived to compensate for lack of heat; that portable heaters were provided to the tenants, who also had the use of a working fireplace; that there was a new furnace in operation at least one week prior to the date cited by

the hearing officer; and that repayment of the amount owed would present them with a financial hardship. At the meeting on September 20, 1994, the Commissioners denied the landlord's appeal on the issue of the rent reductions granted due to decreased housing services but continued the matter in order to provide the landlords with an opportunity to file a hardship application.

This matter was further continued to the November 1, 1994 meeting in order for staff to attempt to contact the landlords.

B. 156 Duboce Ave. #1 & #7

P001-24A (cont. from 10/4/94)

The tenants in two units filed petitions alleging decreased housing services and the landlord's failure to make requested repairs. The hearing officer held the landlord liable to the tenants in the amounts of \$60.00 per month due to lack of adequate heat and \$30 and \$35 respectively (5% of base rent) due to lack of hot water in the units. Additionally, rent overpayments in the amount of \$88.00 were determined to be owed to the tenant in unit #7. The landlord appeals, alleging that: there is insufficient evidence to support the findings; he did not have time to examine and respond to additional evidence and documents submitted after the hearing was concluded; and he has new evidence to submit that he did not have an opportunity to present at the hearing. The landlord's request for postponement of consideration of the appeal was granted at the October 4, 1994 meeting.

MSC: To deny the appeal. (Coffino/Gruber: 5-0)

C. 425 Hyde St. #42

P001-28A

The tenant's petition alleging various decreased housing services was denied for the most part. However, the hearing officer found the landlord liable in the amount of \$25.00 per month due to insufficient pest control in the building. The landlord appeals, alleging that since commercial pest control services are provided in the building and there are no complaints from other tenants, the problem is one of unsanitary housekeeping practices on the part of the tenant and the fact that the tenant fails to make necessary preparations prior to spraying of the unit.

MSC: To accept the appeal and remand the case to the hearing officer to determine whether or not the tenant cooperated with the landlord's pest control efforts. The hearing officer shall determine whether this can be ascertained from the record or if a new hearing is necessary.
(Lightner/Gruber: 5-0)

D. 2350-52 Polk St.

P001-42R & -43R

The landlord's petition for certification of capital improvement costs was granted, for the most part by the hearing officer. Two tenants appeal the

certification of costs for rear stair replacement, claiming that the work was necessitated by the current landlord's deferred maintenance.

MSC: To accept the appeals and remand the case to the hearing officer on the issue of deferred maintenance regarding the rear stairs, taking administrative notice of the Notice of Violation submitted by the tenants on appeal. The hearing officer shall determine whether this can be decided from the record or if a new hearing is necessary.
(Coffino/Lightner: 5-0)

E. 909 Vallejo St.

P001-27A

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$3,552.90. The landlord appeals, conceding that a .4% increase imposed in January 1984 was null and void because it occurred prior to twelve months having elapsed since the last annual increase was imposed in November 1983. However, the landlord asserts that the annual increase imposed in November 1984 should be allowed to stand, because it occurred on the regular anniversary date of November, even though less than 12 months had elapsed since the January 1984 increase.

MSC: To accept the appeal and remand the case to the hearing officer with instructions to find that the .4% increase imposed in January 1984 was not an annual increase, but rather a de minimus amount. Due to the special circumstances of this case, the November 1984 increase is not determined to be null and void and refunds shall be granted accordingly.
(Gruber/Lightner: 4-1; B. Becker dissenting)

F. Parkmerced

P001-27R thru -34R & -46R

The tenant at 350 Arballo Drive #DJ (P001-46R) filed his appeal slightly more than 3 months late because he is very elderly, easily confused, and thought he had filed the appeal when he had not.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Coffino: 5-0)

This case involves numerous petitions for certification of capital improvement costs incurred for the installation of new windows throughout this multi-unit complex. The landlord and the majority of the tenants reached a settlement in this matter, wherein the amount of the passthrough was substantially reduced. Twelve tenants appealed on the basis of financial hardship: 3 of these appeals were accepted for Board hearing; as to the remaining 8, the landlord agreed to stipulate to a finding of hardship and waived imposition of the passthrough to these tenants at the present time. The Board therefore passed the below motion:

MSC: To accept the stipulations of the parties and find sufficient financial hardship to warrant deferral of the certified capital improvement passthrough amounts at this time. Should the tenants' financial circumstances change, however, this issue may be re-opened by either party and will be decided by a hearing officer. (Lightner/Gruber: 5-0)

G. 228 Diamond St.

P001-29A

The tenant's petition alleging a substantial decrease in housing services due to an inoperable elevator for a 1-3/4 month period was granted and the landlord was found liable to the tenant in the amount of \$375.00. The landlord appeals the decision, stating that the "facts of the case do not support the decision."

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

VI. Appeal Hearings

A. 1750 Vallejo St.

O001-65A & O001-85R thru -97R
(cont. from 9/20/94)

The landlord's petition for certification of capital improvement and earthquake-related repair costs was granted, in part, by the hearing officer. The landlord and twelve tenants appealed the decision on various grounds and came to agreement regarding several of the issues raised prior to the first appeal hearing on September 20, 1994. At that hearing, the Commissioners voted to uphold the hearing officer's decision as to the allowance of 10% imputed interest on the landlord's capital improvement costs. The remaining issues before the Board were the landlord's contention that substantial elevator renovations were incorrectly categorized by the hearing officer as routine repairs rather than capital improvements; and that the landlord's actual costs should have been certified, rather than lower estimator valuations.

The hearing on September 20th had been continued, in part, due to the lateness of the hour and the fact that many of the tenants who wished to testify were elderly. However, none of the tenants were in appearance at the continued hearing. Their attorney informed the Board that the tenants had decided not to appear and testify, but rather to be represented by counsel and to have her read a letter into evidence on their behalf. The landlord was represented by his attorney and a witness, an expert in elevator maintenance.

The continued appeal hearing commenced at 6:25 p.m. and concluded at 7:20 p.m. Testimony focused on the nature of the work done to the elevator. The Commissioners also discussed policy questions pertaining to how hearing officers should handle discrepancies between the estimator's evaluation of reasonableness of costs and the landlord's actual costs. After discussion, the Board passed the following motions:

MSC: To certify all costs related to the elevator renovation as capital improvements. (Lightner/Gruber: 3-2; L. Becker, Marshall dissenting)

MSC: Where the landlord's actual costs deviate from the estimator's valuation by 5% or less, to certify the landlord's actual costs. Where the landlord's costs deviate from the estimator's valuation by more than 5%, to certify the amount determined to be reasonable by the estimator. (Coffino/Marshall: 5-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received copies of Fact Sheets recently developed by Rent Board staff, that are now available to the public.

VIII. Director's Report

Executive Director Grubb informed the Commissioners that on October 18th the Rules Committee of the Board of Supervisors voted to conduct a management audit of the Rent Board. The audit probably will not occur until 1996. He also noted an improvement in the office phone system, wherein callers can now be placed on hold instead of just receiving a busy signal when there is no counselor immediately available.

VI. Appeal Hearings (cont.)

B. 1021 Greenwich St. #5

O001-70A
(rescheduled from 10/4/94)

The landlord in this case filed a petition seeking a determination that the subject unit was no longer under the jurisdiction of the Ordinance because it was not the primary residence of the tenant. The hearing officer denied the petition, finding that the question of where the tenant resided was irrelevant, because there are co-tenants residing in the unit with the landlord's knowledge who had never been served with notice in accordance with the provisions of Rules Section 6.14. The landlord appealed the decision, asserting that he substantially complied with Section 6.14 by issuing a termination notice to the original tenant upon learning that he no longer resided in the unit; and that the landlord's failure to strictly comply with the requirements of 6.14 should not be allowed to be used as a means for the tenants to continue to pass the unit from one tenant to another at the same rent. The Board accepted the landlord's appeal for hearing.

At the appeal hearing, the landlord appeared with his attorney. The original tenant, who lives in Southern California, was not in appearance. The subtenants appeared and represented themselves. The appeal hearing commenced at 8:45 p.m. and the record closed at 10:00 p.m. Testimony focused on the

point at which the landlord knew that the subtenants were in occupancy, and actions that he took upon receipt of that knowledge. Upon inquiry from Commissioner L. Becker, the subtenants told the Board that they had been unable to reach the original tenant by telephone, which had rendered fruitless settlement discussions engaged in by the parties throughout the evening. Therefore, it was the consensus of the Board to continue this matter to the meeting on November 1, 1994, in hopes of the parties being able to reach a settlement.

IX. Old Business

The issues of hearing protocols and proposed Ordinance and Rules changes were continued due to the lateness of the hour.

X. New Business

In light of the recent amendment to Section 2.18 of the Rules and Regulations, allowing the Board to delegate its authority to hear hardship appeals to hearing officers, the Commissioners passed the following motion:

MSC: To re-schedule the consolidated tenant hardship appeal hearing in the case at Parkmerced, originally calendared before the Board on November 1, 1994, and instead schedule these cases before a hearing officer. (Lightner/Marshall: 5-0)

XI. Executive Session

The Board went into Executive Session pursuant to Government Code Section 54957 from 10:05 p.m. to 10:20 p.m. to discuss personnel matters.

XII. Calendar Items

October 25, 1994 - NO MEETING

November 1, 1994

9 appeal considerations (incl. 1 cont. from 10/18/94)

6:00 Appeal Hearing: 2888 - 16th St. P001-14A (acpt. 9/20/94)

2 Eviction Reports

Old Business:

A. 156 Duboce #1& #7 P001-24A (considered 10/18/94)

B. 1021 Greenwich St. #5 O001-70A (heard 10/18/94)

C. Hearing Protocols

D. Ordinance and Rules Changes

Executive Sessions:

A. Litigation

B. Personnel

November 8, 1994 - ELECTION DAY, NO MEETING

XIII. Adjournment

President Coffino adjourned the meeting at 10:30 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
November 1, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Executive Session

Litigation - Govt. Code Section 54956.9(a)
Hislop v. Rent Board (Superior Court Case No. 961-976)

- V. Remarks from the Public
- VI. Consideration of Appeals

A. 1655 Lombard St. P001-21A
(cont. from 10/18/94)

Landlord appeal of a decision granting a decreased housing services claim.

B. 3709 - 20th St. P001-30A

Landlord hardship appeal of a decision refunding rent overpayments.

C. 1695 Beach St. #203 P001-44R

Tenant hardship appeal of a decision certifying capital improvement costs.

D. 2159 - 34th Ave. P001-32A

Landlord appeal of a decision refunding rent overpayments.

E. 520 Taylor St. P001-33A

Landlord appeal of a remand decision refunding rent overpayments.

F. 412 Broderick St. P001-31A

Landlord appeal of a decision granting rent reductions due to decreased housing services.

G. 1536 Great Highway #38 P001-45R

Tenant appeal of a decision denying a decreased housing services claim.

H. 391 Leavenworth #26, 23, 37 & 32 P001-47R thru -51R

Five tenants appeal a decision denying their decreased housing services claims due to lack of jurisdiction.

I. 813 Union St. P001-34A

Landlord appeal of a decision granting rent reductions due to decreased housing services but denying a failure to repair claim.

VII. Communications

VIII. Director's Report

IX. Consideration of Allegations of Wrongful Evictions

A. 94 Uranus Terr. O003-29E

B. 2159 - 34th Ave. O002-04E

X. Old Business

A. 156 Duboce #1 & #7 P001-24A
(considered 10/18/94)
B. 1021 Greenwich #5 O001-70A (heard 10/18/94)
C. Hearing Protocols
D. Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

XI. New Business

XII. Appeal Hearing

6:00 2888 - 16th St. P001-14A (acpt. 9/20/94)

XIII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIV. Calendar Items

XV. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, November 1, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:42 p.m.

II. Roll Call

Commissioners Present:	B. Becker; L. Becker; Coffino; Gruber; Lightner; Nash; Steane.
Commissioners not Present:	How.
Staff Present:	Grubb; Wolf.

Commissioner Marshall appeared on the record at 5:40 p.m.;
Commissioner Schlichtmann appeared at 5:47. Commissioner L. Becker
went off the record at 6:30 p.m.; Commissioner Marshall left the meeting at
8:00 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 18, 1994.
(Gruber/Lightner: 5-0)

IV. Consideration of Appeals

A. 3709 - 20th St.

P001-30A

The tenants' petition alleging unlawful increases in rent was granted by the hearing officer and the landlord was found liable to the tenants in the amount of \$1,062.00. An appeal was filed on behalf of the owner of the property by her niece, who is currently acting as her aunt's conservator. In the appeal, it is alleged that repayment of the amount owed would present the owner with a financial hardship; additionally, that the hearing officer erred as to the actual date that the owner no longer resided on the premises.

MSC: To accept the landlord's appeal and remand the case to
the hearing officer on the issues of landlord hardship and to
determine the date that the premises were no longer the
owner's principal place of residence.
(Lightner/Gruber: 5-0)

B. 1695 Beach St. #203

P001-44R

The landlord's petition for certification of capital improvement costs was granted, in part, by the hearing officer. One tenant appeals the decision on the grounds of financial hardship, because he is a self-employed management consultant currently being re-trained in a new field. On his hardship application, he shows ownership of three properties, along with several other significant assets.

MSC: To deny the appeal. (Gruber/Coffino: 5-0)

C. 2159 - 34th Ave.

P001-32A

The tenant's petition alleging unlawful increases in rent was granted and the landlord was found liable to the tenant in the amount of \$4,416.60. On appeal, the landlord asserts that: he should not be held liable for wrongful increases given by the prior owner because he inherited the property, and therefore did not have the opportunity to investigate any potential liabilities resulting from ownership; and that the determination of base rent and allowable increases should include banked amounts.

MSC: To deny the appeal. (B. Becker/Marshall: 5-0)

D. 1536 Great Highway #38

P001-45R

The tenant's petition alleging a substantial decrease in housing services due to the removal of a garbage chute on the premises and a one-week change in the location of his parking space was denied by the hearing officer. The tenant appeals, stating that the hearing officer's assertion that he went up and down the stairs 4 - 6 times per day was in error, and alleging age discrimination.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

E. 391 Leavenworth #26, 23, 37 & 32

P001-47R thru -51R

Twelve tenant petitions alleging a substantial decrease in housing services and, for one unit, the landlord's failure to repair, were denied by the hearing officer due to lack of jurisdiction. The premises, the Aarti Hotel, is a single room occupancy hotel whose rents are controlled and regulated by the San Francisco Redevelopment Agency pursuant to a Grant and Regulatory Agreement dated June 25, 1991. Five tenants appeal the denial of their petitions, calling for an investigation of the Tenderloin Neighborhood Development Corporation (T.N.D.C.), the landlord in this case.

MSC: To excuse Commissioner Marshall from consideration of this appeal. (Lightner/Coffino: 5-0)

MSC: To deny the appeal. (Lightner/Steane: 5-0)

V. Executive Session

The Commissioners went into Executive Session from 6:05 to 6:30 p.m. pursuant to Government Code Section 54956.9(a) to discuss the case of Hislop v. Rent Board (Superior Court Case No. 961-976).

IV. Consideration of Appeals (cont.)

F. 1655 Lombard St.

P001-21A
(cont. from 10/18/94)

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$877.50 due to lack of heat in the unit for several months. On appeal, the landlords maintain that the tenants were not given an annual rent increase and late charges and returned check fees were waived to compensate for lack of heat; that portable heaters were provided to the tenants, who also had the use of a working fireplace; that there was a new furnace in operation at least one week prior to the date cited by the hearing officer; and that repayment of the amount owed would present them with a financial hardship.

At the meeting on September 20, 1994, the Board denied the appeal on the issue of the rent reductions granted due to decreased housing services but continued the matter to the October 18th meeting in order to provide the landlord with an opportunity to file a hardship application. As nothing had been received by the time of the October 18th meeting, the Commissioners again continued this matter in order for staff to contact the landlord and make sure that there had not been a language problem or some other misunderstanding regarding a possible hardship appeal. Just prior to this evening's meeting, a hardship application was submitted by the landlord.

MSC: To accept the landlord's appeal on the basis of financial hardship and remand the case to the hearing officer on the record to order that repayment of the amount owed be spread out over a 9-month period. (Coffino/Lightner: 5-0)

G. 520 Taylor St.

O001-63A

The landlord filed a petition for increases based on increased operating expenses, which was denied by the hearing officer. However, the landlord was found liable to one tenant in the amount of \$4,289.43 due to an unlawful rent increase issued by a prior owner of the property in 1983. The landlord appealed the decision and the case was remanded for a new hearing to consider the equitable defense of laches as it applied to the unlawful rent increase issue only. In the Decision on Remand, the hearing officer found that the tenant had not engaged in unreasonable delay in asserting his rights, that therefore laches did not apply in this case, and the landlord's original amount of liability to the tenant was affirmed. The landlord appeals the remand decision,

alleging that the hearing officer misapplied the doctrine of laches and that the evidence does not support the ruling.

MSC: To deny the appeal. (Marshall/B. Becker: 5-0)

H. 412 Broderick St.

P001-31A

The tenant's petition alleging substantial decreases in housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$890.00 due to an open plumbing pipe, an unstable and unsafe back stair landing, an inoperable intercom system, warped refrigerator door, lack of pest control, and removal of a basement garbage room. The landlord appeals, alleging that: the hearing officer exhibited bias against him and favoritism toward the tenant petitioner; the tenant failed to pay rent for a five-month period; the tenant failed to provide access to repair persons; the tenant received an amount greater than that requested in her petition; and the tenant's proper remedy would have been to repair and deduct.

MSC: To deny the appeal. (B. Becker/Coffino: 5-0)

I. 813 Union St.

P001-34A

The tenant's petition alleging a substantial decrease in housing services was granted in the amount of \$100.00 per month due to an inoperative garage door and denied as to loss of basement passageway storage space. The tenant's failure to repair claim was denied due to there being no outstanding notice of rent increase. On appeal, the landlord objects to the continuing use by the tenant of a furnace room for storage.

MSC: To deny the appeal. (Marshall/Coffino: 5-0)

VI. Communications

The Commissioners received several pieces of correspondence concerning cases on the calendar.

VII. Consideration of Allegations of Wrongful Evictions

A. 94 Uranus Terrace

O003-29E

In the instant case, the hearing officer found a wrongful eviction attempt on the part of the landlords because the subject premises was not exempt due to owner-occupancy at the time the notice to vacate was served upon the tenant. The building consists of the landlords' unit, a lower unit occupied by a tenant, and the subject unit, which is occupied by three tenants with three separate leases. Therefore, the hearing officer found that the building contained five units and was under the jurisdiction of the Ordinance, and recommended that the Board send the landlords a letter advising them that they should not increase or decrease the number of units at the premises, if the action is taken

in order to remove the premises from Rent Board jurisdiction. The landlords' attorney forwarded a letter to the Board, challenging the hearing officer's conclusion that the property in question, containing three physical units, was at relevant times actually a five-unit building by virtue of the number of "tenancies." After discussion of the policy questions raised, the Commissioners declined to adopt the hearing officer's recommendation.

B. 2159 - 34th Ave.

O002-04E

The hearing officer found that the eviction of the tenant was wrongful, because the property was not owned by a natural person, but rather was held in trust, as of the date the notice to vacate was issued. Additionally, the relative who allegedly moved into the property was the owner's nephew, who was not an immediate family member as required by Ordinance Section 37.9(a)(8). As the tenant has vacated the unit, and litigation over this matter is pending in Superior Court, the hearing officer recommended that the Board monitor the litigation, but take no further action on this matter at this time. It was the consensus of the Board to adopt the hearing officer's recommendation.

VIII. Old Business

A. 156 Duboce #1 & #7

P001-24A (considered 10/18/94)

The Commissioners received communications from the landlord in this matter, his attorney, and one of the affected tenants. The landlord's appeal of the hearing officer's decision was denied by the Board at the meeting on October 18th, and the landlord requested that the matter be reconsidered because of an alleged misunderstanding concerning his requested postponement of the appeal consideration. As a final motion had been made and carried, the Commissioners took no further action in this matter.

B. 1021 Greenwich #5

O001-70A (heard 10/18/94)

The Deputy Director informed the Commissioners that the parties had reached a settlement in this case and that the landlord would therefore be withdrawing his appeal.

C. Ordinance and Rules Changes

The Deputy Director informed the Commissioners that Supervisor Alioto has requested that the City Attorney's office prepare legislation which would clarify that a "home for the aged" must consist of senior housing which provides support as well as housing services in order to qualify for exemption from the Rent Ordinance. Commissioner Marshall volunteered to be the Board's representative on a committee that will be convened to examine broadening the exemption language of Ordinance Section 37.2(p)(3) to include certain communal health-related housing providers and substance abuse programs.

The issue of Hearing Protocols was continued to a future meeting.

IX. Remarks from the Public

Al Goodwin recommended that the Board codify in the Rules and Regulations the policy of accepting a 5% deviation from estimator valuations of the cost of capital improvements and hold a Public Hearing in order to do so. He also informed the Board of the difficulties in bringing a comparables petition in situations where a deceased prior owner had failed to raise rents.

Robert Pender invited the Commissioners to an anticipated Victory Party for Proposition I on November 16th.

X. Appeal Hearing

2888 - 16th St. #10

P001-14A (acpt. 9/20/94)

Two tenant petitions alleging decreased housing services were granted, in part, by the hearing officer and the landlord was found liable to the tenants in unit #7 in the amount of \$1,115.00 and in the amount of \$212.50 to the tenants in unit #10. Additionally, rent overpayments in the amount of \$2,350.68 were determined to be owed to the tenants in unit #10. The landlord appealed the decision, alleging that: the hearing officer miscalculated the amount of the rent overcharges, as the tenants paid no rent for the months of August and September 1993; the landlord should not be held liable for rent overcharges accruing from a period before her ownership of the property, because the prior owner filed for bankruptcy and the tenants' only remedy would have been an offset against rent payments owing during the pendency of the bankruptcy proceeding; and that the hearing should be re-opened regarding a period prior to the current owner's possession of the property, when the tenants in unit #7 failed to pay rent.

The landlord's appeal was denied as to the rent reductions due to decreased housing services granted to the tenants in both units. The landlord's appeal was accepted for Board hearing as to unit #10 only, on the issue of the effect of the prior owner's bankruptcy on the rent overpayments determined to be owed to the tenants and to ascertain amounts owing to the landlord, if any, due to unpaid rent.

The landlord did not appear at the appeal hearing, but was represented by her attorney. As the tenants were not in attendance at the scheduled time for commencement of the proceedings, the Executive Director phoned them and was told that they did not receive notice of the hearing. In order to give the tenants time to appear, the start of the hearing was delayed until approximately 8:00 p.m.; it concluded at 9:00 p.m. At that time, the tenants in unit #10 appeared and represented themselves, accompanied by the tenant in unit #7, whose case was not at issue. Testimony and argument focused on the circumstances surrounding the transfers of ownership of the property, the proper interpretation of pertinent bankruptcy code sections, and the tenants'

rent payment history. After discussion, the Commissioners passed the following motion:

MSC: To grant the landlord's appeal only to reduce the amount owed to the tenants from \$2,350.68 to \$1,531.70 due to the tenants not having paid rent for the months of August and September 1993. (Coffino/Gruber: 5-0)

XI. Calendar Items

November 8, 15, 22 1994 - NO MEETINGS

November 29, 1994

8 appeal considerations

6:00 Appeal Hearing: 1271 - 26th Ave. O001-20R (acpt. 9/20/94)

Old Business:

A. Ordinance and Rules Changes: Issues for Discussion

B. Hearing Protocols

Executive Session: Personnel

December 6, 1994

3 appeal considerations

1 eviction report

6:00 Appeal Hearing: 54 Brighton St. P001-08A (post. from 10/4/94)
(acpt. 8/30/94)

Old Business: Ordinance and Rules Changes

Executive Session: Personnel

XII. Adjournment

President Coffino adjourned the meeting at 9:30 p.m.

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, November 29, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Vice-President L. Becker called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Gruber; How; Lightner; Marshall; Nash; Schlichtmann; Steane.
Commissioners not Present:	B. Becker; Coffino.
Staff Present:	Grubb; Wolf.

Commissioner How appeared on the record at 7:00 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 1, 1994.
(Schlichtmann/Lightner: 5-0)

IV. Remarks from the Public

Al Goodwin commented on the Board's failure to make significant progress on effectuating changes to the Rules and Regulations and suggested that the Board meet on a weekly basis. Several landlords appeared and commented on questions and concerns they have regarding the implementation of Proposition I, passed by the voters on the November ballot. John Gaddy, Esq., remarked on the difficulties his 81-year old mother experienced in attempting to evict a tenant from a unit for her own use.

V. Consideration of Appeals

A. 121 - 15th Ave.

P001-52R

The tenants filed a petition alleging a decrease in housing services because there is only room to park one car in the garage, whereas they maintain that they were promised two parking spaces at the inception of the tenancy. The hearing officer denied the petition, finding that the tenants had failed to prove that they were promised the use of two parking spaces. The tenants appeal, swearing that they told the truth at the hearing, and furnishing a copy of a lease

agreement with the provision for parking for "one car only" scratched out and initialed.

MSC: To deny the appeal. (Schlichtmann/Lightner: 5-0)

B. 3825 - 24th St.

P001-35A

Four tenants petitioned regarding decreased housing services in the unit and the landlord was found liable to the tenants in the amount of \$3,245.00, to be apportioned among the tenants based upon the length of their respective tenancies. The landlord appeals, asserting that: the \$75.00 per month rent reduction granted for protruding nails in the kitchen floor is excessive and not supported by the evidence; the \$75.00 per month rent reduction for an unstable deck should be disallowed because BBI failed to mention or cite the owner for any defect involving the deck; and the problems regarding the toilet leak, cracks in the shower surround and non-skid matting constitute failures to repair, and not decreases in housing services.

MSC: To deny the appeal. (Marshall/Schlichtmann: 5-0)

C. 3833 & 3835 - 24th St.

P001-36A

The tenants' petitions alleging unlawful increases in rent were granted and the landlord was found liable to one tenant in the amount of \$834.00 due to rent overpayments. Additionally, a noticed 398.53% increase to be effective May 1, 1994 was found to be of no force and effect, because the landlord had failed to owner-occupy the three-unit building in "good faith". The landlord owns four buildings of four units or less, and has demonstrated a pattern of moving into each building for a period of no more than 18 months, raising the rent to "market", and then moving out. On appeal, the landlord argues that: because the hearing officer accepted documents after the close of the record which were not provided to the landlord, the landlord has been denied basic due process; the decision relies on hearsay evidence, such as a newspaper article; and the facts do not support the hearing officer's conclusion that the landlord has not resided on the premises in good faith, because numerous repairs have been effectuated in the subject buildings while the landlord resided therein and the landlord took up occupancy in most cases after tenants had voluntarily vacated.

MSC: To accept the appeal and remand the case to the hearing officer on the record to allow the landlord to respond to any submissions received from the tenants after the record had closed, and to make any necessary changes to the decision. A new hearing will be held only if necessary.
(Marshall/Schlichtmann: 5-0)

D. 151 Garcia

P001-38A

The tenants' petition alleging decreases in housing services was granted, in part, by the hearing officer and the landlord was found liable to the tenants in the amount of \$1,700.00 due to improperly constructed front stairs, inoperable windows, and a defective toilet. On appeal, the landlord asserts that the hearing officer ordered rent reductions for the steps and toilet for a period after which these problems were remedied.

MSC: To accept the appeal and remand the case to the hearing officer to determine the proper termination dates for the rent reductions for the front stairs and toilet. This will be done by written correspondence with the parties or a new hearing, at the hearing officer's discretion. (Schlichtmann/Lightner: 5-0)

E. 310 Columbus Ave. #110

P001-53R

Four tenants in this residential hotel petitioned for rent reductions due to decreased housing services related to the condition of the common area bathrooms and concerns for their personal safety. The three male petitioners were granted rent reductions due to the condition of the mens' bathroom; the female petitioner did not receive a commensurate rent reduction, as the womens' bathroom was found to be in a sanitary condition. One of the male petitioners appeals the denial of his petition regarding the lack of safety and quiet enjoyment of his unit, alleging that tenants who posed a threat to other occupants of the hotel were not evicted in a timely manner; occupants of a residential hotel have a right to the same standards of peace and quiet as tenants in any other type of living situation; and the landlords failed to exercise reasonable prudence regarding a situation of "foreseeable violence", whether or not it was within their immediate control.

MSC: To deny the appeal. (Lightner/Schlichtmann: 5-0)

VI. Appeal Hearing

1271 - 26th Ave.

P001-07A

The tenants filed a petition alleging an unlawful increase in rent from \$1,300 to \$2,200 per month for the premises, which are used as a foster care facility. The original Decision of Hearing Officer found that Rent Board jurisdiction was preempted by California Health and Safety Code Section 1518, which states that licensed care facilities are not subject to local controls on rent. Upon appeal by the tenants, the case was remanded by the Rent Board Commissioners, who found that jurisdiction was not preempted by State law, and directed the hearing officer to render a decision based on the other issues raised by the parties. In her Decision on Remand, the hearing officer found jurisdiction because California Health and Safety Code Section 1566.3 prohibits considering a foster home as anything other than a "family dwelling",

and therefore it would be contrary to law to view this property as commercial, regardless of the understanding of the parties. The landlords appealed the remand decision, arguing that the legal principle of "waiver" does not apply to the facts of this case; the landlords should be entitled to a "comparables" increase due to extraordinary circumstances resulting in the initial rent having been set very low; and the amount of \$1,300 was not the initial base rent but a temporary arrangement to be followed by a long-term rent commitment as outlined in the various lease proposals promulgated by the landlords. The Board accepted the landlords' appeal for Board hearing on the issue of landlord hardship and to determine the proper base rent amount.

The landlords appeared at the appeal hearing and were represented by counsel; one of the tenants appeared, accompanied by his attorney. The hearing commenced at 7:05 p.m. and concluded at 10:15 p.m. Testimony focused on the circumstances surrounding the original rental of the unit by the tenants; exhibits were entered into evidence to document the understanding of the parties as to the rent; and testimony and evidence were taken regarding the landlords' income and resources. After discussion by the Commissioners of the facts and evidence, Commissioner L. Becker suggested that the parties attempt to settle this matter. Upon an indication by counsel for both parties that a settlement was possible, the proposed terms being that the tenants use the sum owed to them by the landlords as a down payment for purchase of the subject premises, this matter was continued indefinitely in order for the tenants to investigate the possibility of obtaining a loan.

IV. Remarks from the Public (cont.)

Additional comments from several landlords were taken regarding the implementation of Proposition I.

V. Appeal Considerations (cont.)

F. 4041 Irving St. #A

P001-37A

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$305.00 due to a malfunctioning freezer and unreliable stove. The landlord appeals, asserting that the building is exempt due to its having been constructed in 1980.

MSC: To accept the appeal and remand the case to the hearing officer on the issue of jurisdiction.
(Lightner/Gruber: 5-0)

G. 1045 Lake St. #9

P001-54R

The tenant's petition alleging an unlawful increase in rent was dismissed due to her failure to appear at the properly noticed hearing. The tenant filed an appeal five months late, alleging that she was out of the country due to the extended

illness and subsequent death of her mother. After discussion, the Commissioners instructed staff to contact the tenant and ascertain the reason for her appeal having been filed so long after it appears that she arrived back in the country.

H. 3718 - 24th St.

P001-55R

The tenant filed a petition alleging a substantial decrease in housing services and the landlord's failure to make requested repairs, and an additional petition alleging the landlord's failure to repair, both of which were consolidated for hearing. The tenant has filed numerous previous petitions with the Board, and most of the issues raised in the instant petitions have previously been adjudicated. The hearing officer, therefore, denied the instant petitions, finding most of the issues to be res judicata and, as to the remaining issues, that the tenant failed to meet her burden of proof that the conditions constituted code violations. The tenant appeals, asserting that there are still code violations on the premises.

MSC: To excuse Commissioner L. Becker from consideration of this appeal. (Lightner/Schlichtmann: 5-0)

MSC: To deny the appeal. (Lightner/Gruber: 4-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received several communications regarding the implementation of Proposition I.

VIII. Director's Report

Executive Director Grubb reported as follows:

A. The Christmas Party for Commissioners and staff will be held on December 11th at 4:30 p.m. at Commissioner Coffino's home.

B. Legislation regarding the exemption of "old age homes" from Rent Ordinance jurisdiction will go before the Housing and Land Use Committee of the Board of Supervisors on Thursday, December 1, 1994.

C. Several Supervisors have inquired as to the effects of Proposition I on domestic partners.

IX. Consideration of Allegations of Wrongful Evictions

24 Belcher St. #3

P001-39E

Two defective eviction notices were served on the tenant in both 1991 and 1992. On May 12, 1994, the tenant filed a petition with the Rent Board alleging

past unlawful rent increases. On June 1, 1994, the tenant wrote to the landlords to complain about the rent increases and repair issues. The tenant was then served with two additional defective eviction notices on June 8, 1994. On August 18, 1994, ten days after the Rent Board hearing regarding the unlawful rent increases, the tenant was served with another defective eviction notice. The tenant was thus served with a total of seven defective eviction notices, each alleging that an owner wished to occupy the unit.

The hearing officer recommended that the Commissioners write each of the landlords, their manager, and their attorney a stern, cautionary letter warning them against proceeding with attempts to terminate this tenancy. Additionally, it was recommended that this matter be closely monitored and immediately referred to the District Attorney's office if the landlords did not rescind the August 18th termination notice by December 15, 1994.

MSC: To accept the hearing officer's recommendation in this case. (Gruber/Schlichtmann: 5-0)

X. Old Business

The Commissioners briefly discussed questions related to the implementation of Proposition I, and agreed to discuss this topic in-depth at a Special Meeting on December 7th and at the regular meeting on December 13th.

XI. Calendar Items

December 6, 1994

4 appeal considerations

1 eviction report

6:00 Appeal Hearing: 54 Brighton St. P001-08A (post. from 10/4/94)
(acpt. 8/30/94)

Old Business: Ordinance and Rules Changes

Executive Session: Personnel

December 7, 1994

SPECIAL MEETING: Ordinance and Rules Changes: Proposition I

December 13, 1994

Ordinance and Rules Changes: Proposition I

December 20, 1994

6 appeal considerations

Old Business:

A. Ordinance and Rules Changes

B. Hearing Protocols

XII. Adjournment

Vice-President L. Becker adjourned the meeting at 11:40 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
December 6, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals
 - A. 24 Belcher St. #3 P001-56R
Tenant appeal of a decision determining rent overpayments.
 - B. 331 - 27th Ave. P001-39A
Landlord appeal of a decision granting a rent reduction due to a decrease in housing services.
 - C. 1370 Washington St. P001-40A
Landlord appeal of a decision determining rent overpayments by the tenants in two units.
 - D. 190 O'Farrell St. #512 P001-58R
Tenant appeal of the dismissal of his decrease in services petition due to his failure to appear at the hearing.
- VI. Communications
- VII. Director's Report
- VIII. Consideration of Allegations of Wrongful Evictions
 - 2201 - 44th Ave. O001-85E & P001-59E
- IX. Old Business

Ordinance and Rules Changes: Proposition I

IV. Remarks from the Public (cont.)

X. New Business

XI. Appeal Hearing

6:00 54 Brighton St. P001-08A (acpt. 8/30/94)
(post. from 10/4/94)

XII. Executive Session

Personnel Matters - Govt. Code Section 54957

XIII. Calendar Items

XIV. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, December 6, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:40 p.m.

II. Roll Call

Commissioners Present: L. Becker; Coffino; Gruber; How; Nash;
Steane.
Commissioners not Present: B. Becker; Marshall.
Staff Present: Grubb; Wolf.

Commissioners Lightner and Schlichtmann appeared on the record at
5:42 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 29, 1994.
(L. Becker/Steane: 5-0)

IV. Remarks from the Public

Robert Pender invited the Commissioners to the next meeting of the Tenants' Network, which will be held on December 14th at 5:30 p.m. at 455 Golden Gate Avenue. He reminded the Board members that Proposition I won by 4,000 votes and encouraged a "spirit of cooperation" between landlords and tenants. Madeline Moore, a recent purchaser of a 3-unit building which she resides in, questioned the fairness of the retroactive rent rollback provisions of Proposition I.

V. Consideration of Appeals

A. 24 Belcher St. #3

P001-56R

The tenant's petition alleging unlawful increases in rent was granted, in part, and the landlord was found liable to the tenant in the amount of \$477.61. The tenant appeals the decision, asserting that the "de minimus" provisions of the Rules and Regulations only apply to increases that were "rounded up", and not to those that are excessive by less than .05% for some other reason; and that

after the imposition of a null and void rent increase, all subsequent increases must also be null and void because they are in excess of the allowable amount.

MSC: To deny the appeal. (Steane/Lightner: 5-0)

B. 331 - 27th Ave.

P001-39A

The tenant's petition alleging a decrease in housing services due to the lack of a working intercom system was granted and the landlord was found liable to the tenant in the amount of \$437.50. The landlord appeals, alleging that the amount of the rent reduction is excessive (15% of the base rent, or \$125.00 per month); and that a 5% reduction in rent would more appropriately compensate the tenant for her inconvenience.

MSC: To deny the appeal. (L. Becker/Steane: 4-1; Gruber dissenting)

C. 1370 Washington St.

P001-40A

Two tenants filed petitions alleging unlawful increases in rent. The landlord was found liable to the tenant in unit #6 in the amount of \$1,871.19 and to the tenant in unit #4 in the amount of \$252.00. On appeal, the landlord asserts that the tenants are precluded from raising claims of unlawful rent increases given by the prior owner, because they signed estoppel certificates prior to this landlord's assuming ownership of the property; the tenants refused to provide rent increase information to the current owner, which prevented the instant landlord from pursuing a claim against the prior owner; that there is sufficient evidence of laches in the record to bar the tenants' claim; and that the hearing officer erred in the calculation of rent overcharges.

MSC: To accept the appeal and remand the case to the hearing officer on the issue of laches and to determine the amounts owing to the tenant from the landlord based on the rent increase notices issued in May, 1994.
(Lightner/Gruber: 5-0)

D. 190 O'Farrell St. #512

P001-58R

The tenant's petition alleging a substantial decrease in housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant provides documentation showing that he had a court date scheduled during the same week as the hearing.

MSC: To deny the appeal. (L. Becker/Coffino: 5-0)

VI. Appeal Hearing

54 Brighton St.

P001-08A

The tenant filed a petition alleging a substantial decrease in housing services and unlawful rent increases. The portion of the petition alleging decreased services was denied, because the hearing officer found that on-going yard maintenance was not verifiably promised at the inception of the tenancy. The allegation of unlawful rent increases was granted, in part, and the landlord was found liable to the tenant in the amount of \$4,739.82 due to an increase from \$550.00 to \$650.00 approximately two months after the inception of the tenancy. The tenant had also challenged the legality of three rent increases within the allowable amount that she had paid voluntarily, because they were not noticed in writing by the landlord. The hearing officer found that the increases were not unlawful because they had not been imposed by the landlord. On appeal, the landlord asserted that the amount of \$550.00 had never been established as the rental amount for the unit. Rather, that there was an understanding that the rent would be set as soon as the landlord could determine what market rent for the single family dwelling should be, as the house had never been rented prior to this tenancy. The Commissioners accepted the landlord's appeal for Board hearing.

The landlord appeared at the appeal hearing and represented himself. The tenant appeared with a representative and a witness. Testimony focused on the circumstances surrounding the tenant's moving into the unit and the parties' understanding of what the rental amount would be. After discussion, the Commissioners passed the following motion:

MSC: To sustain the landlord's appeal and overturn the Decision of Hearing Officer as to the amounts ordered refunded to the tenant. The base rent for the tenancy is determined to have been \$650.00.
(Coffino/Gruber: 3-2; L. Becker, Steane dissenting)

VII. Communications

The Commissioners received several communications pertaining to the implementation of Proposition I.

VIII. Director's Report

Executive Director Grubb informed the Commissioners that Mayor Jordan had invited President Coffino to attend a budget meeting along with the heads of other Commissions. Additionally, he advised them as to the status of the Hislop appeal. Deputy City Attorney Ilene Dick will attend the Board meeting on January 3, 1995 to discuss this case.

IX. Consideration of Allegations of Wrongful Evictions

2201 - 44th Ave.

O001-85E & P001-59E

The tenant filed two Reports of Alleged Wrongful Eviction, alleging that the landlords were unlawfully attempting to evict him. While previous eviction notices to this tenant were legally defective, and failed to provide a just cause reason, a legally sufficient notice on the basis of owner-occupancy was subsequently issued and the hearing officer found no reason to doubt that the current eviction attempt is being effectuated in good faith. Therefore, she advised that the Board take no further action in this matter beyond monitoring the continuing occupancy of the owner in the unit.

MSC: To accept the hearing officer's recommendation.
(L. Becker/Coffino: 5-0)

X. Old Business

The Board briefly discussed issues pertinent to the implementation of Proposition I, which will be further discussed at the Special Meeting on December 7, 1994.

XI. Executive Session

The Commissioners went into Executive Session pursuant to Government Code Section 54957 from 9:00 p.m. to 9:20 p.m. to discuss personnel matters.

XII. Calendar Items

6:30 December 13, 1994

Ordinance and Rules Changes: Proposition I

December 20, 1994

6 appeal considerations

6:00 Public Hearing: Proposition I - Anniversary Dates

Old Business:

A. Ordinance & Rules Changes

B. Hearing Protocols

December 27, 1994 - NO MEETING

XIII. Adjournment

President Coffino adjourned the meeting at 9:20 p.m.

**NOTICE OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Wednesday, 5:30 p.m.,
December 7, 1994
25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Old Business
Ordinance and Rules Changes
- IV. Remarks from the Public (cont.)
- VI. Calendar Items
- VII. Adjournment

**MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Wednesday, December 7, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:53 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber; Lightner; Nash; Steane.
Commissioners not Present:	B. Becker; How; Schlichtmann.
Staff Present:	Grubb; Wolf.

Commissioner Marshall appeared on the record at 5:58 p.m.

III. Old Business

Ordinance and Rules Changes: Proposition I

The Commissioners engaged in a discussion of issues pertaining to the implementation of Proposition I, including: the setting of anniversary dates for purposes of imposition of the next allowable annual increase; banking of rent increases and capital improvement passthroughs not imposed in years during which the units were not subject to the jurisdiction of the Rent Ordinance; vacancy control and decontrol in instances where units were vacated during the period May 1, 1994 and the effective date of Proposition I, either voluntarily or through an eviction; and issues surrounding revolving room-mate situations and the requirements of Rules Section 6.14.

Several members of the public who were in attendance informally participated in the discussion, including informing the Commissioners as to their personal situations and offering suggestions. Staff will draft language regarding the setting of anniversary dates for newly covered units, which will be put out for Public Hearing on December 20, 1994.

IV. Calendar Items

December 20, 1994

6 appeal considerations

6:00 Public Hearing: Proposition I - Anniversary Dates
Old Business: Ordinance & Rules Changes

December 27, 1994 - NO MEETING

V. Adjournment

President Coffino adjourned the meeting at 8:30 p.m.

**NOTICE OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Wednesday, 6:00 p.m.,

December 13, 1994

25 Van Ness Avenue, #70, Lower Level

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Old Business
- Ordinance and Rules Changes: **Proposition I**
- IV. Remarks from the Public (cont.)
- VI. Calendar Items
- VII. Adjournment

**NOTICE OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

**PLEASE
NOTE
DIFFERENT
TIME**

Tuesday, **6:30 p.m.**,
December 13, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Old Business

Ordinance and Rules Changes: **Proposition I**

- IV. Remarks from the Public (cont.)
- VI. Calendar Items
- VII. Adjournment

MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

Tuesday, December 13, 1994 at 6:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 6:40 p.m.

II. Roll Call

Commissioners Present:	L. Becker; Coffino; Gruber; Lightner; Nash; Steane.
Commissioners not Present:	How; Marshall.
Staff Present:	Gartzman; Grubb; Wolf.

Commissioner B. Becker appeared on the record at 7:00 p.m.; Commissioner Schlichtmann appeared at 7:30 p.m.

III. Remarks from the Public

Many members of the public, predominantly landlords, voiced their concerns regarding the implementation of Proposition I. Several individuals addressed the Commissioners regarding their personal situations, and the financial repercussions to them if the language of the proposition is strictly interpreted. Ted Gullickson of the Tenants' Union spoke in opposition to any attempts by the Board to mitigate the impacts of Proposition I through regulation, if such regulations contradict what he believes to be the plain language of the proposition.

IV. Old Business

Ordinance and Rules Changes: Proposition I

The Board engaged in a lengthy discussion of issues related to the implementation of Proposition I with Deputy City Attorney Ilene Dick. Topics discussed included banking of rent increases for periods prior to Rent Board jurisdiction; vacancy control and decontrol of newly covered units; and comparable petitions, particularly in light of the case of Vega v. City of West Hollywood (223 Cal.App.3d 1342 [Sept. 1990]). The Board requested that Executive Director Grubb begin preparing a supplemental budget request for submission to the Board of Supervisors in anticipation of the increased workload that will ensue from Proposition I, to be discussed at the next meeting. Commissioner Steane suggested that the Board's Voice Mail message

regarding Proposition I issues be updated to inform landlords of the possibility of filing for rent increases based on comparables. Commissioner Coffino will attempt to circulate draft proposals for Rules changes prior to Christmas.

IV. Remarks from the Public (cont.)

Additional comments were taken from the public regarding issues related to Proposition I.

V. Calendar Items

December 20, 1994

6 appeal considerations

6:00 Public Hearing: Proposition I - Anniversary Dates

Old Business: Ordinance & Rules Changes

December 27, 1994 - NO MEETING

XII. Adjournment

President Coffino adjourned the meeting at 10:20 p.m.

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 5:30 p.m.,
December 20, 1994
25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 405 - 2nd Ave. #4 P001-42A

Landlord appeal of a decision granting a petition alleging decreased housing services and unlawful rent increases.

B. 2377 San Jose Ave. P001-62R

Tenant appeal of the dismissal of his petition alleging unlawful rent increases due to lack of jurisdiction.

C. 45 Magnolia St. P001-41A

Landlord appeal of a decision determining rent overpayments and ordering rent reductions due to decreased housing services.

D. 6 Locksley Ave. #8D & 7A P001-60R & P001-57R

Two tenants appeal a decision certifying capital improvement costs.

E. 515 John Muir Dr. #313 P001-61R

The tenant appeals the dismissal of his petition alleging failure to repair and decreased housing services on the basis that the petition is frivolous and the majority of the issues are res judicata.

F. 251 San Jose Ave. P001-43A

The landlord appeals the remand decision refunding rent overpayments.

VI. Communications

VII. Director's Report

VIII. Consideration of Allegations of Wrongful Evictions

IX. Old Business

Ordinance and Rules Changes: Issues for Discussion

IV. Remarks from the Public (cont.)

X. New Business

XI. **Public Hearing**

6:00 Proposition I: Anniversary Dates for Newly Covered Units

XII. Calendar Items

XIII. Adjournment

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, December 20, 1994 at 5:30 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Coffino called the meeting to order at 5:45 p.m.

II. Roll Call

Commissioners Present: B. Becker; L. Becker; Coffino; Lightner;
 Schlichtmann; Steane.

Commissioners not Present: Gruber.

Staff Present: Grubb; Wolf.

Commissioner Nash appeared on the record at 5:48 p.m.; Commissioner Marshall at 5:50; and Commissioner How at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 6 and December 7, 1994.
 (Steane/Coffino: 4-0)

IV. Consideration of Appeals

A. 405 - 2nd Ave. #4

P001-42A

The tenant's petition alleging decreased housing services and unlawful increases in rent was granted and the landlord was found liable to the tenant in the amount of \$755.00 due to the loss of a working fireplace, restrictions on water use for car washing and removal of a clothesline on the roof. Rent overpayments were determined in the amount of \$126.81. On appeal, the landlord maintains that the directive prohibiting car washing was mandated by the Water Department, and that once water rationing was terminated, he assumed that the tenants would know that it was all right to resume use of the building water supply for this purpose. Additionally, he asserts that he merely informed tenants that use of the roof would be at their own risk and states his belief that \$15.00 per month for the loss of a fireplace that had not been used for 20 years is excessive.

MSC: To deny the appeal but remand the case to the hearing officer to augment the Conclusions of Law with information

contained in the hearing officer's Memorandum in response to the landlord's appeal. (Coffino/Marshall: 5-0)

B. 2377 San Jose Ave.

P001-62R

The tenant's petition alleging unlawful increases in rent was denied due to lack of jurisdiction. The hearing officer found that the subject tenancy, which is for a "storage/workspace", is commercial and therefore not covered by the provisions of the Rent Ordinance. On appeal, the tenant alleges that there are several factual errors in the Decision of Hearing Officer; that he worked and resided on the premises, which therefore entitles him to the protections of the Ordinance; and that, although the original terms of his tenancy prohibited residential use of the premises, the property manager knew or should have known that he was living there.

MSC: To deny the appeal. (Lightner/Coffino: 5-0)

C. 6 Locksley Ave. #8D & 7A

P001-60R & P001-57R

The landlord's petition for certification of the costs of exterior painting of the building for 127 units was granted, resulting in a monthly passthrough in the amount of \$4.45 per tenant. The tenant in unit #7A appeals the decision on the grounds that the landlord failed to justify \$20.00 of the \$65,000 in claimed costs, and that 10% imputed interest should not have been granted to the landlord, who did not incur any actual interest costs. The tenants in unit #8D allege on appeal that the hearing officer erred as to their move-in date, and the "6-Month Rule" contained in Rules Section 7.12(b) should preclude their being assessed these costs.

MSC: To deny the appeal of the tenant in unit #7A. To grant the appeal of the tenant in unit #8D and remand the matter to the hearing officer to issue a technical correction. (Marshall/Lightner: 5-0)

D. 251 San Jose

P001-43A

The tenant's petition alleging a substantial decrease in housing services and an increase in rent above limitations resulted in a conciliation agreement as to both issues. However, the agreement reflected an incorrect understanding by the parties regarding the 3-year Statute of Limitations on rent refunds. The matter was therefore reopened and a Decision rendered regarding the rent overpayment issue; the parties agreed to allow the conciliation of the decrease in services issue stand. The landlord appealed the determination of \$3,835.36 in rent overpayments and the appeal was accepted and remanded on the issue of the date of the 1982 rent increase. The remand decision holds the landlord liable to the tenant in the amount of \$2,167.71. The landlord appeals the remand decision, asserting that the amounts actually paid by the tenant are different from those calculated by the hearing officer.

MSC: To deny the appeal except for a technical correction on the record, if possible, regarding the actual amounts paid by the tenant. (Lightner/Coffino: 5-0)

V. Public Hearing

A Public Hearing regarding a proposed amendment to the Rules and Regulations which would clarify the setting of anniversary dates for imposition of annual rent increases for newly covered units under Proposition I commenced at 6:15 p.m. and concluded at 7:20 p.m. Eighteen landlords and thirteen tenants testified regarding various issues pertaining to the implementation of Proposition I. Of these, only three individuals addressed the anniversary date issue in the proposed Rules change. After discussion, the Board adopted the following change to Rules and Regulations Section 1.11 (new language underlined):

Section 1.11 Anniversary Date

(a) The anniversary date is the date on which the tenant's current rent became effective except in the case of certified capital improvements, rehabilitation, and/or energy conservation work which, when granted, do not affect or change the anniversary. The next allowable rent increase shall take effect no less than one year from the anniversary date, but when imposed after one year, shall set a new anniversary date for the imposition of future rent increases.

(b) For units which became covered under the Ordinance as of December 22, 1994 (as defined in Ordinance Section 37.12 as amended on December 22, 1994) the first anniversary date shall be the date of the last lawful and effective rent increase, or the lawful rent at the time the tenancy commenced, whichever occurred later. The next allowable rent increase shall take effect no less than one year from the anniversary date, but when imposed after one year, shall set a new anniversary date for the imposition of future rent increases.

MSC: To adopt the proposed change to Rules and Regulations Section 1.11 to clarify how anniversary dates shall be determined for newly covered units under Proposition I. (Coffino/Lightner: 5-0)

IV. Consideration of Appeals (cont.)

E. 45 Magnolia St.

P001-41A

The tenant's petition alleging decreased housing services and unlawful increases in rent was granted, in part, by the hearing officer. The landlord was found liable to the tenant in the amount of \$15,125.00 due to an increase in rent from \$500.00 to \$700.00 that was initiated by the tenant in August 1989, due to the tenant's fear that the landlord would have to sell the property and the rent for

this two-unit building would be raised even more by a new owner; and due to a \$100.00 rent increase for exclusive use of the garage, found to be the tenant's entitlement at the inception of the tenancy. Additionally, the landlord was found liable in the amount of \$800.00 due to the tenant's having lost exclusive use of the garage. No rent reduction was ordered for loss of storage space, as the hearing officer found that the tenant had unilaterally added to the storage and/or office area originally included in the terms of the tenancy. On appeal, the landlord alleges that: the tenant never had exclusive use of the garage, and therefore there is no decrease in housing services; the landlord's subsequent petition for increases based on capital improvements and increased operating expenses should have been considered in the Decision; and the hearing officer erred in calculating the allowable rent amount.

MSC: To accept the appeal and remand the case to the hearing officer to determine whether any of the different types of estoppel bar the tenant from recovering rent overpayments resulting from the \$200.00 rent increase in 1989.
(Coffino/Lightner: 5-0)

F. 515 John Muir Dr. #313

P001-61R

The tenant filed a petition alleging substantial decreases in housing services and the landlord's failure to repair. The petition was dismissed without hearing as frivolous because many of the issues had been raised by the tenant and decided in previous petitions. The tenant appeals, asserting that the acting hearing officer abused her discretion by not scheduling the matters for hearing and not acting on the petition in a timely manner; and reiterating the legitimacy of the 22 complaints raised in the petition.

MSC: To deny the appeal. (Lightner/Nash: 5-0)

VI. Communications

In addition to correspondence regarding cases on the calendar, the Commissioners received several communications pertaining to the implementation of Proposition I.

VII. Director's Report

Executive Director Grubb informed the Board that he had a conversation with City Attorney Louise Renne, who informed him that a plan was in place for the transition from the Board being represented by Deputy City Attorney Ilene Dick to its new Deputy City Attorney, Jay Cummings. Mr. Grubb also invited the Commissioners to attend the staff Christmas party from 12:00 noon to 1:30 p.m. on Thursday, December 22nd.

VIII. Remarks from the Public

Several individuals made additional remarks regarding Proposition I.

IX. Calendar Items

December 27, 1994 - NO MEETING

January 3, 1995

8 appeal considerations (1 cont. from 11/29/94)

Old Business: Ordinance & Rules Changes - Proposition I

Executive Session: Litigation

X. Adjournment

President Coffino adjourned the meeting at 8:45 p.m.

